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BEFORE THE
CALIFORNIA INTEGRATED WASTE MANAGEMENT BOARD

IN THE MATTER OF:)
)
REGULAR MONTHLY BUSINESS)
MEETING)
)

TRANSCRIPT OF PROCEEDINGS

January 25, 2000

9:30 A.M.

8800 Cal Center Drive
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REPORTED BY:
Terri L. Emery,
CSR No. 11598

1 SACRAMENTO, CALIFORNIA, JANUARY 25, 2000 - 9:30 A.M.

2 * * * *

3 CHAIRMAN EATON: Good morning, everyone,

4 and welcome to -- depending upon your definition, the new
5 millenium or new year -- the January meeting of the
6 California Integrated Waste Management Board.

7 Madam Secretary, please call the roll.

8 BOARD SECRETARY: Board Members Jones.

9 BOARD MEMBER JONES: Here.

10 BOARD SECRETARY: Moulton-Patterson.

11 BOARD MEMBER MOULTON-PATTERSON: Here.

12 BOARD SECRETARY: Pennington.

13 BOARD MEMBER PENNINGTON: Here.

14 BOARD SECRETARY: Roberti.

15 BOARD MEMBER ROBERTI: Here.

16 BOARD SECRETARY: Chairman Eaton.

17 CHAIRMAN EATON: Here.

18 Nothing has changed since we last gathered
19 here, Dan?

20 BOARD MEMBER PENNINGTON: That's true,
21 Mr. Chairman. Always a waiting game.

22 CHAIRMAN EATON: Yeah.

23 All right. Members, in keeping with past
24 practices, I'll lead off the ex partes that I have, some
25 of those which we received, as you well know, late

1 yesterday from the various individuals that have business
2 before the Board. So it will suffice if I read them off
3 and you just say "I had the same as Mr. Eaton" or add any
4 of those that are different.

5 For the record, Joy Williams, Environmental
6 Health Coalition regarding 38th Street item on today's
7 agenda; Rick Best from Californians Against Waste
8 regarding the RPPC item on today's agenda; Jerry
9 Jamgotchian regarding the City of Hawthorne; Gene Gantt,
10 City of Benecia, regarding the 1998 annual report; Jan
11 Schneider, Central Contra Costa County regarding Class II
12 waste; Mike Ball, MB Opportunities, regarding his item on
13 the agenda; Mark Stemen from CSU Chico regarding the
14 Recycling Outreach Program; Cornelia Snyder regarding
15 crumb rubber; Evan Edgar regarding base year inaccuracies,
16 Kathleen Gallagher from City of San Mateo, annual report;
17 Jackie Lucas from the City of Emeryville regarding their
18 annual report; Timothy Jones from the County of Imperial,
19 siting element; Jim Barstow from Golden Byproducts
20 regarding the Assembly Select Committee on tire disposal;
21 Tim Shestek of APC regarding sponsorship item; and finally
22 on my list is Ginger (phonetic) Bremburg from Los Angeles
23 County regarding base year corrections.

24 Mr. Pennington, anything to add to that
25 regarding ex partes?

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1 BOARD MEMBER PENNINGTON: Yes. I'm sorry,
2 Mr. Chairman. Yes. I have on Agenda Item Number 10 a fax
3 from Rick Best, Californians Against Waste; Agenda Item
4 35, fax from Joy Williams; and Agenda Item 43, a fax from
5 Jerry Jamgotchian, as well as those that you had put
6 forward.

7 CHAIRMAN EATON: Thank you.
8 Mr. Jones.

9 BOARD MEMBER JONES: Mr. Chairman, the same
10 ones you had and Chuck Helget on permitting issues, Evan
11 Edgar on some sponsorship issues, John Cupps on the AB 939
12 report, and I just got handed an E-mail from Bob Nelson on
13 Lionudakis.

14 CHAIRMAN EATON: Ms. Moulton-Patterson.

15 BOARD MEMBER MOULTON-PATTERSON: The same
16 as the ones you reported, Chairman Eaton.

17 CHAIRMAN EATON: Senator Roberti.

18 BOARD MEMBER ROBERTI: I think I'm
19 up-to-date, Mr. Chairman.

20 CHAIRMAN EATON: Up-to-date? Okay. Thank
21 you.

22 For those of you who may be new and those
23 of you who attend on a regular basis, to remind you there
24 are speaker forms in the back. If you wish to address any
25 of the items on today's agenda or tomorrow's, kindly fill

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1 out a form with the appropriate item number and bring it
2 up to my left and to your right to Lisa Dominguez. She'll
3 make sure we know of your desire to speak.

4 Any reports from Board Members?

5 Mr. Pennington.

6 BOARD MEMBER PENNINGTON: No, Mr. Chairman.

7 CHAIRMAN EATON: Mr. Jones.

8 BOARD MEMBER JONES: No.

9 CHAIRMAN EATON: Ms. Moulton-Patterson.

10 BOARD MEMBER MOULTON-PATTERSON: No.

11 CHAIRMAN EATON: Senator Roberti.

12 BOARD MEMBER ROBERTI: No, except to say
13 that I had a number of (inaudible) over the holidays and
14 my last was to Commerce Waste-to-Energy plant, and just
15 that I was terribly impressed by their operation and I
16 think where you generally have some civic support for
17 waste-to-energy, it is something that maybe we should give
18 a little bit more attention to than we have in the past.

19 I know it's controversial. You have
20 general support. It's the one way of disposing of excess
21 waste, excess tires, things like that, efficiently, and I
22 just hope it becomes a little more of our agenda,
23 recognizing its controversy.

24 CHAIRMAN EATON: I think as they look at it
25 and repackage it from incineration to transformation --

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1 BOARD MEMBER ROBERTI: Yes.

2 CHAIRMAN EATON: -- or some other name,
3 we'll look at it. What used to, I think, be called --
4 enough said right there as we move through, and I know
5 there are other efforts to increase that kind of
6 transformation process with other kinds of byproducts as
7 we go through.

8 I just have a couple of items. First off,
9 I'd like to recognize Rosita Polo for her outstanding
10 performance over this past year and regarding the Board's
11 contribution to the United California State Campaign Fund.
12 I think she did an outstanding job, and thanks to her and
13 all of the other people in our organization, we were able
14 to donate over \$34,000, and I think it's just a great
15 effort by everyone and to thank Rosita for her hard work
16 and everyone. Thank you, Rosita and we really appreciate
17 it.

18 In addition, over the last couple of weeks
19 being on the road I had the opportunity to get down to the
20 Monterey area and award Pebble Beach Company one of the
21 "WRAP of the Year" awards. Obviously it seemed probably
22 for most of you like easy duty, but it was really a most
23 informative kind of operation. The Pebble Beach Company
24 is doing things that other companies and other businesses
25 I think will soon follow. For instance, most of you who

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1 have ever been in that peninsula know that there's a
2 tremendous disease that's threatening the local forest
3 down there called the pitch spore disease, and one of the
4 things that has happened is they brought on an individual,
5 an old farmer, to try and deal with the issue. And low
6 and behold he started a composting operation and the only
7 thing that kills this spore, which can be airborne,
8 waterborne, and soilborne is composting, and they have
9 successfully, at least through their composting program,
10 utilized all of the fallen trees through winter storms and
11 started that process.

12 They are also, on their own nickel,
13 restoring a granite quarry that's on the premises and
14 they're doing all kinds of wonderful things in addition to
15 just the regular recycling of bottles cans and papers and
16 are actually looking to us to attend their vendor show,
17 which I guess is later this year, wherein they would like
18 to expand into recycled-content products because they feel
19 in the future the marine layer and the salt air that their
20 walkways that they do to restore to the beach access areas
21 would be -- their life would be prolonged if they could go
22 to a more synthetic material.

23 So I think overall while they get a lot of
24 notoriety because of the golf tournaments and car shows,
25 they are also very environmentally conscious and it was

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1 very impressive. So if any of the Board Members or anyone
2 got kind of a chance to go down there, they would love to
3 show you. It's fascinating because you look at what
4 they're doing. And they actually had people wanting to
5 buy their compost and they're using everything that they
6 possibly can on the golf courses and their premises. So
7 it's really an interesting process by which they've come
8 and I think were very deserving of the award.

9 In addition, annually the Bay Area starts
10 out with the children, and Ms. Moulton-Patterson, you'll
11 be interested in this, to save dollars and save the
12 environment campaign, and where nine counties and some 110
13 cities participate with environmental education of the
14 children in the "Shop Smart" campaign and they kicked that
15 off this year. They're learning how to shop smart, and
16 it's really a great program and one that I think our Board
17 staff has participated in and I think is going to be a
18 very successful effort in the years to come.

19 And finally one other note that I would
20 just kind of ask Board Members and those in the audience,
21 in case you may have missed it. Beginning, I believe it's
22 February 7th, and it may be the 6th or the 7th, we start
23 our Senate Bill 1066 process by which we will hold a
24 series of public hearings around the state, beginning in
25 the north and going to the south and I think winding up

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1 about the third or fourth week in February before it comes
2 back here.

3 I would encourage each and every one of you
4 to go to as many of those as possible. That will probably
5 be the Board's most important work over the next couple of
6 months as we go through and try and frame and decide how
7 we are going to handle the extension process of local
8 jurisdictions and their attempts to meet the 50 percent
9 mandate. I think by going to these workshops as a Board
10 Member we signify a couple of things -- one, that we are
11 as interested as they are in getting the process as fair
12 and reasonable and listening to them; and two, also going
13 out to the people who are actually going to implement
14 those types of programs and hearing from them as opposed
15 to the people who may come here and make certain
16 presentations. I think they're going to be very helpful.
17 It will start I think the 7th in Redding and they move
18 down to the Sacramento area and they move to the Bay Area,
19 and finally to southern California at a couple of sites.
20 I think it's very important.

21 I think Mr. Schiavo, Mr. Chandler, if could
22 you kindly just pass around the -- I understand there's
23 some dates and times and that for the Board Members'
24 offices in case they may have gotten misplaced, and if it
25 can be posted on our web site. I think they already are.

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1 If not, that would be helpful so that we can get as many
2 people to participate as possible. That would be very,
3 very beneficial I think to all of us as we move through
4 this agenda.

5 Having said that, which is a mouthful, I
6 would now like to sort of just take things out of order a
7 little bit and get to the consent calendar because there's
8 an item that even though it's the last item on our agenda
9 is also going to be the first because it involves an
10 employee who has gone on.

11 I would like to place the following
12 items -- first let me ask are there any Members who
13 wish -- I know you all received the consent agenda, and I
14 would like to thank Ms. Fish because as we started the
15 consent agenda again, we asked that it be put out at least
16 a week or so in advance so Members could take a look at
17 it, and I think we have finally gotten to that point.
18 There have been additions and subtractions and what have
19 you, but at least we have made that attempt that will
20 serve not only the membership of the Board, but I think
21 the public as well. So thank you for that. Are there any
22 items that need to be pulled? Okay.

23 Having said that, the items for the consent
24 calendar are Items 1, 9, 11, 13, 15, 17, 19, 20, 21, 22,
25 29, 31, 34, 37, 38, 39, 40, 41, 45, 49 and 52.

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1 BOARD MEMBER PENNINGTON: Mr. Chairman.

2 CHAIRMAN EATON: Mr. Pennington.

3 BOARD MEMBER PENNINGTON: I'll move

4 adoption of the consent calendar.

5 BOARD MEMBER JONES: I'll second.

6 CHAIRMAN EATON: And 45 was -- okay. My

7 understanding is Item Number 45 was pulled, so --

8 BOARD MEMBER PENNINGTON: Mr. Chairman,

9 I'll move --

10 CHAIRMAN EATON: No. No. Wait a minute.

11 I think 45 -- it's on. Yes.

12 MR. CHANDLER: Mr. Chairman, I believe it

13 was added to consent.

14 CHAIRMAN EATON: Right.

15 MR. CHANDLER: So it will stay on.

16 BOARD MEMBER PENNINGTON: So I don't need

17 to amend my motion.

18 CHAIRMAN EATON: Mr. Pennington moves and

19 Mr. Jones seconds that we adopt the consent calendar as

20 proposed.

21 Madam Secretary, please call the roll.

22 BOARD SECRETARY: Board Members Jones.

23 BOARD MEMBER JONES: Aye.

24 BOARD SECRETARY: Moulton-Patterson.

25 BOARD MEMBER MOULTON-PATTERSON: Aye.

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1 BOARD SECRETARY: Pennington.

2 BOARD MEMBER PENNINGTON: Aye.

3 BOARD SECRETARY: Roberti.

4 BOARD MEMBER ROBERTI: Aye.

5 BOARD SECRETARY: Chairman Eaton.

6 CHAIRMAN EATON: Aye.

7 So as you can see, we've gone fast from 52
8 items and I think if my subtraction is 21, I think we have
9 somewhere around 31 items left.

10 A couple of other short announcements and
11 then we'll get to the Executive Director's report. He
12 thought I forgot him, but I didn't. I'm just sort of
13 taking things out of order.

14 Item A, which was the Lionudakis item, has
15 been removed from the continued business agenda item and
16 is part of the new title that's later. I believe it's
17 Item Number --

18 BOARD MEMBER PENNINGTON: 34.

19 CHAIRMAN EATON: Right. And that Item F,
20 which was the base year correction for City of Hemet, has
21 been pulled as well. In addition, Item Number B, which is
22 concerning Chemlite, will take place at 3:00 p.m. this
23 afternoon. We'll have an Administrative Law Judge
24 present. My understanding, Members, is that legal
25 counsel, as well as I think the ALJ, will bring us into a

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1 closed session for a couple of minutes just to kind of go
2 over procedural aspects the ALJ may want to have for this
3 hearing.

4 In addition, the Lionudakis item that was
5 mentioned previously will be heard at 4:00 or thereafter,
6 as soon as we complete the Chemlite, and the hearing
7 regarding Item Number 3, Waste Tire Hauler Number 0107,
8 that will be heard tomorrow morning at 9:30 a.m.

9 I think that completes most of the
10 administrative business. Mr. Chandler, the floor is
11 yours.

12 MR. CHANDLER: Thank you, Mr. Chairman and
13 Members. I do have three items I would like to brief you
14 on today. The first is many of you are aware Modesto
15 Energy Limited Partnership announced last week they are
16 shutting down their electrical production operation
17 adjacent to the Filbin tire pile. And as you can imagine,
18 this shut-down will have great significance to the waste
19 tire program as MELP has been consuming approximately 6
20 million waste tires per year. A large portion of these
21 tires will now be going to landfills since there's not
22 sufficient market capacity to absorb them. Because of
23 this potentially large increase in the number of waste
24 tires going into the landfills, will be bringing forward
25 an agenda item next month on the issue of monofilling

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1 waste tires.

2 Speaking of the Filbin site, our contractor
3 is continuing to sort out and shred the oversized and
4 unburned tires of what we're calling the phase two
5 remediation area, and to date a total of 1,900 tons, that
6 would be the equivalent of 190,000 passenger tires of
7 shredded, oversized tires have been taken to the Fink Road
8 landfill in Stanislaus County. An estimated 115,000
9 burnable tires have been sorted out of the pile and taken
10 to the MELP remediated area and are currently being
11 burned.

12 MELP is working with the Board to move
13 burnable tires from the area of the oversized tires to the
14 permitted area. At this point it appears MELP plans to
15 cease operation this Friday. MELP has informed our staff
16 that the passenger tires being removed from the phase two
17 area are too encased in dirt and mud to be used. The
18 company has to burn all transient tires on site before
19 operations cease.

20 After the plant closes, MELP has indicated
21 that six people will remain to monitor the storm water
22 runoff system as constructed as part of the Board's
23 winterization plan. Speaking of that system, I can report
24 that the winter's first major rainfall, everything is
25 working according to plan. Over the weekend enough rain

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1 fell at the site to deposit measurable amounts of water
2 into the containment ponds. Generally, there is one to
3 two feet of water in the ponds with plenty of room for
4 more water to accumulate. Yesterday with only light rain
5 at the site, there was no measurable runoff and no water
6 flowing from the pipe system.

7 The Regional Water Quality Control Board
8 has asked Geosyntech to implement its surface water runoff
9 treatment program, which includes sampling the water in
10 the ponds and pumping them out as necessary.

11 Next item, Members, I was going to speak to
12 the SB 1066 process. I think Chairman Eaton has very
13 adequately covered that. I will add just a couple of
14 points. As he mentioned, the workshops have been
15 scheduled for February 8th in Redding and February 9th in
16 Santa Rosa, and as indicated, information is described in
17 brochures in the back of the room and will be up on our
18 web site soon this week.

19 Finally, I believe it's important to
20 acknowledge when other organizations recognize our staff
21 for good work. Accordingly, I'd like to commend Heidi
22 Sanborn of the Board's Diversion Planning and Local
23 Assistance Division. At last week's Regional Council of
24 Rural Counties annual appreciation dinner, Heidi received
25 the organization's environmental services joint powers

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1 authority appreciation award for her outstanding support
2 of their efforts.

3 Over the years, Heidi has been RCRC's
4 liaison with the Board and has assisted them greatly in
5 their efforts to comply with AB 939. They obviously
6 appreciated her efforts because they created this honor
7 with Heidi in mind and plan to award it annually. The
8 dinner was attended by more than 200 state and local
9 officials from all over California, and the result of
10 being an award winner, Heidi shared the table of honor
11 with Senators Chesbro, Costa and Leslie, Assembly Member
12 Machado and Legislative Counsel Byron Gregory.

13 Heidi, would you please stand and be
14 recognized so we can give you a round of applause?

15 (Applause)

16 MR. CHANDLER: Finally, Members, in the
17 spirit of continuing to recognize outstanding staff, I do
18 have a resolution this morning to give a departing member
19 of the Board, and if you'll indulge me I'd like to go to
20 the podium.

21 CHAIRMAN EATON: Please.

22 MR. CHANDLER: I'd like to do that now.

23 In what has become an all too frequent
24 event here as of late, we do have a member of our
25 management team that has been I think recognized for her

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1 outstanding managerial skills and has been swept away to
2 one of our sister departments, the Department of Toxic
3 Substance Control, and of course I'm speaking of Caren
4 Trgovcich.

5 Caren, would you come forward? And we have
6 a resolution for you today. Of course we have the typical
7 "whereases" and Caren, I'm not going to go through and
8 read all of these. I think I will go through and read the
9 final "resolve".

10 This resolution, I think, very beautifully
11 highlights Caren's 13 years here at the Board, starting
12 first when it was the old Solid Waste Management Board. I
13 can say that having been here nine years myself, but Caren
14 preceded my arrival and was instrumental in starting first
15 with the development of our closure post-closure
16 regulations prior to Subtitle D's enactment. Her early
17 years also were marked by her leadership in the Policy
18 Office where she developed our tiered permitting system
19 when we moved kind of from the one-size-fits-all to the
20 tiered structure.

21 Recently I asked her to move into the
22 markets area as Deputy Director. I believe she really
23 turned around the loan program and got the number of loans
24 we were issuing to a much higher level. Certainly the
25 certification and compliance of the RPPC, our rigid

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1 plastic program, was taken forward under Caren's
2 leadership and most recently our green building efforts,
3 our organics efforts and C&D efforts. I could go on and
4 on. Certainly the efforts of the Markets Division are
5 much attributed to Caren, her leadership and her great
6 staff.

7 I will conclude with the resolution as it
8 concludes in the "resolve" area, and that is that, "The
9 California Integrated Waste Management Board does hereby
10 commend Caren Trgovcich for her outstanding work, her
11 dedication to developing California's integrated waste
12 management system, and her commitment to fostering
13 organizational excellence."

14 Just as a side note to kind of highlight or
15 feature Caren's spunky personality and wit, it was only
16 recently that I learned that -- every Friday I hold a
17 management, executive management meeting from 9:00 to
18 11:00, and it seemed like about 10:00 Caren used to slip
19 out. I thought well, maybe it was just time for a break.
20 What I found out is that her staff between 10:00 and 10:30
21 brewed up a pot of Turkish coffee and Caren would slip
22 out, run over to the division office, I think get down one
23 of these quick cups of coffee, and come back with even
24 more vim and vigor than she had at the beginning of the
25 executive staff meeting.

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1 (Laughter)

2 MR. CHANDLER: With that, Caren, I'll just
3 say we all wish you the best for your efforts, not only at
4 DTSC, but wherever your professional career leads you in
5 the future. Again, thank you for all your years of hard
6 work and dedication here. Congratulations.

7 (Applause)

8 MS. TRGOVCICH: I've been waiting for this
9 opportunity for 13 years.

10 (Laughter)

11 CHAIRMAN EATON: Remember, there are
12 children in the audience.

13 (Laughter)

14 MS. TRGOVCICH: I promise it's very short.
15 I used to always wonder what it would be like to get up
16 here without an agenda item before me and just to be able
17 to speak on a free-form basis. I have just a few notes,
18 but a number of thank-yous.

19 First of all, a thank you to this Board as
20 well as all the prior Boards before you. You provide the
21 opportunity for the staff here and the organization
22 through your selection and support of an Executive
23 Director and his or her selection in support of his or her
24 executive staff and their management team. It is you who
25 provide the leadership, you who provide the opportunity

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1 and set the direction.

2 I will just mention under this recent Board
3 it has been my extreme pleasure to be able to undertake
4 your direction in the area of green building, organics,
5 and most recently promoting greater opportunities in the
6 education arena, and I see that as key areas. You're
7 filling the silence. I don't know how else to describe
8 it. There are areas in state government that are left
9 unaddressed, and being the type of independent Board that
10 you are, you have the ability to take those issues on. I
11 thank you for those opportunities.

12 I thank the Executive Director, Ralph
13 Chandler, for his vision, for his ability to see in his
14 staff and his management team their ability to take on new
15 challenges and new opportunities, and that's been a
16 tremendous boom for me. Over the years I have been able
17 to take advantage of opportunities that fate has more or
18 less dropped in my lap.

19 I can't go being up here without saying
20 thank you to my first Executive Officer, George Larson,
21 who is in the back of the room who saw the ability within
22 me at least to be able to serve him in a way and to be
23 able to transfer that information to Ralph so that I could
24 continue to serve Ralph. And I've just been able to grow
25 under the leadership of these individuals and it's been

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1 tremendous for me.

2 The management team that you have here, the
3 executive staff are -- each bring their own skills, their
4 own pluses, their own minuses. We all have our negatives.
5 I certainly have mine, and we're not here to talk about
6 those. They will serve you well, and they serve the staff
7 of this organization well and I hope that they will in the
8 future, but the staff is what makes us tick. They are
9 what make us work. They are the ones that bring the work
10 forward, that prepare the agenda items, that make your
11 wishes and desires and direction happen, and it is to them
12 that I provide my greatest thank you.

13 And last but not least, behind every
14 successful woman there is another successful woman, and
15 that is Selma Lindrud, and I could not have possibly done
16 what I have done in my most recent position without her.
17 And so I just want to say thank you to you all.

18 (Applause)

19 CHAIRMAN EATON: You don't think you're
20 going to get away from this Board without one more
21 admonition, do you? One more admonition, as you move from
22 our wasteland to what others have referred to as the real
23 wasteland, the Department of Toxic Substances, which I
24 know will improve in quality since most of our managerial
25 staff has transferred over there --

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1 (Laughter)

2 CHAIRMAN EATON: I want to first
3 acknowledge that this is not my own sort of creative
4 thinking, but really Linda Moulton-Patterson who, during
5 the last Board meeting as we were talking about something
6 in past decades about what plastic means and how the
7 definition has changed where if you were a plastic person,
8 she reminded me of a scene in the movie of "The Graduate",
9 for those of you who remember, where Dustin Hoffman is
10 being admonished by an individual who, I believe, was a
11 friend of the family's. And he said to that individual,
12 "Just remember. The future is plastics."

13 (Laughter)

14 CHAIRMAN EATON: I think that's the line;
15 isn't it? So I leave you with that as you leave to remind
16 you to watch that movie and remember that, and that's
17 really Linda Moulton-Patterson and she gets all the credit
18 for that, and just remember. The future is plastics.

19 Thank you.

20 MS. TRGOVCICH: Thank you.

21 CHAIRMAN EATON: Thank you. All right.

22 Members, moving to --

23 BOARD MEMBER JONES: Mr. Chairman.

24 CHAIRMAN EATON: Mr. Jones.

25 BOARD MEMBER JONES: I had a question on

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1 one of the items that Mr. Chandler brought up.

2 CHAIRMAN EATON: I'm sorry.

3 BOARD MEMBER JONES: We talked about the
4 MELP closure and that 6 million tires represents 20
5 percent of the flow of tires in this state. While we're
6 going to start talking about monofilling regs, I'm
7 wondering. I had a conversation with the people that
8 operate CAM and we had entered into an agreement with them
9 at some point to help use that facility because of some
10 civil engineering issues with shredded tires and densities
11 and propensity for fires, to work with them to try to use
12 that facility to help us so we didn't rush into the
13 monofill regs and they provided that for us.

14 I think Dana Humphries actually worked for
15 them and assigned the person that was going to develop
16 those criteria, and I'm wondering if with a new 6 million
17 tires of flow that may not have a home, if it instead
18 of -- I don't know how long this process is to do monofill
19 regs, but I would like to think about the idea of
20 reinstating that agreement with them so that we have a
21 permitted facility.

22 I don't want to see these tires going to
23 more illegal stock piles or in creeks, and if it takes an
24 agenda item, then let's do it. If it just takes an
25 administrative-executive thing, I think we need to talk

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1 about it. I think we need to be responsible to the idea
2 that we've just lost, through no fault of ours, 20 percent
3 of the flow of tire disposal in this state. We had better
4 have something in place to take its place or we're going
5 to be in deep trouble or deep tires. And I would hate to
6 see us wait three or four or six months while we develop
7 monofill regs and have 3 million tires that may end up
8 somewhere other than a permitted facility.

9 MR. CHANDLER: Well, as my comments
10 indicated, I think that the recent announcement by MELP
11 does bring this issue to the forefront. This Board did
12 approve a set of regulations back in October. They are
13 just wrapping up what we call the financial analysis
14 review at the Air Resources Board, and we're scheduled to
15 go out for the 45-day public comment period. Those
16 regulations that you approved do include provisions
17 criteria for monofilling waste tires. It was my belief --

18 (Phone ringing)

19 MR. CHANDLER: Excuse me. It was my
20 belief --

21 BOARD MEMBER JONES: If that's for me, I'm
22 busy.

23 (Laughter)

24 MR. CHANDLER: It was my belief that --

25 BOARD MEMBER PENNINGTON: It's your

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1 broker.

2 (Laughter)

3 CHAIRMAN EATON: Sell, sell, sell.

4 BOARD MEMBER JONES: I'm not that busy.

5 (Laughter)

6 MR. CHANDLER: Then again, it could be the
7 Governor's office.

8 (Laughter)

9 BOARD MEMBER JONES: That's true. In which
10 case, I will take that call.

11 MR. CHANDLER: Where was I? Basically
12 trying to give the schedule and where we are is we're soon
13 to see the release of those regulations that you approved
14 in October that do include the monofill criteria. And
15 it's my position and my belief that before we release
16 those for the 45-day public comment period, we should
17 bring those back to the Board so you understand the --
18 perhaps have a chance to re-review the limited nature of
19 those criteria. I do not believe that right now that
20 involves bailing, but simply as the statute calls for
21 shredding and monofilling the tires at regional
22 facilities.

23 So I think your point is one which can be
24 brought into the discussion of where are we heading with
25 the monofill regulations. Do we want to see these

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1 facilities permitted under the rubric of the solid waste
2 statutes? Do we want to have the tire statutes cover
3 monofilling? And what about some immediate needs we have
4 for disposal capacity right now? So we will write the
5 item sufficiently broad enough so that in February we can
6 begin to address all of those items.

7 I'm not inclined to issue an administrative
8 permit in the next 30 days and I have informed Waste
9 Management of that position. I don't think it was
10 appropriate how it was handled last time. We just need to
11 bring it under a Board-approved permit structure, and that
12 will be through the monofill definitions or the regular
13 standard permit. Obviously we can talk about more about
14 how to deal with this pending emergency situation and can
15 if you wish to discuss it further.

16 Thank you.

17 CHAIRMAN EATON: Any other questions for
18 Mr. Chandler? Hearing none, we'll move right to continued
19 business items. As I mentioned Item A is now Item 24.
20 Item B is scheduled for 3:00 p.m. this afternoon. So the
21 first item is Item Number C, reconsideration of previously
22 approved methods to correct base year inaccuracies.

23 Mr. Schiavo and Mr. Leary are making the
24 presentation.

25 MR. SCHIAVO: Mark Leary will be making the

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1 presentation regarding this item.

2 MR. LEARY: Good morning, Mr. Chairman and
3 Members of the Board. My name is Mark Leary with the
4 Office of Local Assistance.

5 Agenda Item C is a continuation item of an

6 item originally introduced at the December Board meeting.
7 And just to quickly refresh our collective memories, what
8 we proposed here is a consideration of setting a time
9 limit basically on the allowance of base year corrections
10 back to 1990 and '91 for jurisdictions who are seeking to
11 address their diversion rate numbers.

12 Our recommendation basically has three
13 primary components. The suggestion is that we end the
14 existing practice of allowing corrections for the years
15 1990 through 1996 with the exceptions of jurisdictions
16 that have either submitted a formal request and supporting
17 documentation by March 31st of this year or are currently
18 under Board-issued compliance orders.

19 Condition two is in the future not to allow
20 any corrections to any Board-approved base year disposal
21 for a tonnage amount that is more than four years old, and
22 condition three is to continue to approve the changes that
23 we've allowed and will continue to allow correction of
24 base years to a more recent calendar year as supported by
25 new generation studies.

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1 As we described in December, the whole
2 rationale behind this is it is becoming increasingly more
3 difficult to go back to 1990, identify the appropriate
4 tonnage of disposal amounts, and then for the jurisdiction
5 to generate those numbers first and foremost and
6 secondarily for us and Board Members to review those and
7 assign any credibility or validity to the numbers.

8 So we're suggesting in the interest to all
9 of our collective interests that it might be appropriate
10 to draw kind of a conclusion to this process. What we
11 tried to do is do it in a gradual way. We proposed March
12 31st of this year as the date to kind of give
13 jurisdictions a heads-up; allow them, if they're seeking a
14 base year fix, to provide their documentation to buy that
15 time; and in essence to create a pipeline that will
16 gradually draw this proposal to a close. But I also would
17 like to suggest as we've met with each of you individually
18 since the December Board meeting, you've made suggestions
19 and we certainly believe the conditions could be modified,
20 for instance. We've been back and forth with each of you
21 in discussions that maybe two calendar years was more
22 appropriate, maybe three, maybe four. We've proposed four
23 in the agenda item, but we would certainly entertain any
24 suggestions for improvement that you might have.

25 And then finally in the discussion in

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1 December, you asked us to take a look at a couple of
2 things. One of those things was comparative costs between
3 doing a new base year study versus doing a base year
4 correction, and we'd like to suggest that -- respectfully
5 suggest that that kind of analysis is difficult and may
6 not really allow you to draw any conclusions because the
7 situations are so specific from jurisdiction to
8 jurisdiction. We've collected some anecdotal data that
9 indicates that some studies for base year fixes have cost
10 jurisdictions anywhere from \$10,000 to \$50,000, but that
11 is also true for new base year and waste generation
12 studies. So it really kind of depends on the size of the
13 jurisdiction, the problems we're looking to correct, and
14 the prices of the consultants that are out there doing the
15 business.

16 With that, I'd like to conclude my
17 presentation.

18 CHAIRMAN EATON: Any questions of staff,
19 Mr. Schiavo or Mr. Leary?

20 BOARD MEMBER JONES: Mr. Chairman.

21 CHAIRMAN EATON: Mr. Jones.

22 BOARD MEMBER JONES: In discussions with
23 different jurisdictions that have called and industry
24 people that have called to wonder, I think the last
25 presentation in December talked about -- sort of made it

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1 seem like we're not going to do base year adjustments.
2 People are -- jurisdictions are going to be allowed to
3 adjust a base year. Going back to 1990, and I think it's
4 illustrated best in the AB 939 report that says in 1989
5 diversion rate in this state was less than 9 percent.
6 That's in the preamble of AB 939. But with all the base
7 year adjustments that started in 1997 until today, the
8 rate from 1990 went from 9 percent diversion to 17 percent
9 diversion.

10 If we continue to do base year adjustments
11 for 1990, we never have to do a program. All we have to
12 do is keep playing with the numbers. I don't think it's
13 fair to jurisdictions to try to recall what happened ten
14 years ago, and I think that what this policy does is says
15 you have every right in the world to establish a new base
16 year, but you're going to have to use more valid, more
17 verifiable data. There weren't scales in a lot of
18 facilities in 1990, so the best you're going to do by
19 going to a 1990 base year adjustment is guess. You're
20 obviously going to guess in a way that gets you to 25
21 percent without a whole lot of programs.

22 So I think it just makes the information
23 that much more accurate, but jurisdictions have to know
24 they will always be entitled, until this Board says they
25 can't, to adjust that base year. It will just change the

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1 year that we're going to use as a base, not the programs.
2 So I think that's critical because I was getting calls
3 from people that know this stuff pretty well and they were
4 of the assumption that nobody was ever going to be allowed
5 to adjust their base year again.

6 So hopefully that made it as clear as mud.

7 CHAIRMAN EATON: Questions? Okay.

8 I have three speaker slips in support.

9 Mr. Paul Ryan.

10 MR. EDGAR: Evan Edgar for Paul Ryan. I
11 would like to introduce him as part of the CRRC team, if
12 that's possible.

13 CHAIRMAN EATON: And Evan Edgar. This is
14 like the WWF now.

15 (Laughter)

16 MR. EDGAR: We'll be tag-teaming a lot of
17 issues in the year 2000. Thank you, Chairman and Board
18 Members. My name is Evan Edgar of Edgar Associates on
19 behalf of the California Refuse Removal Council.

20 Thanks for picking up this issue today. In
21 the year 2000 we've reached critical mass and this issue
22 is very important to the industry as Mr. Jones pointed
23 out. Paul Ryan has been part of the Inland Empire
24 Disposal Association for ten years and taken on CRRC
25 issues for southern California. There's a lot of issues

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1 down south that are important. For the last ten years,
2 Paul and I worked together on a lot of key issues such as
3 today, but we felt a need to upgrade our program for the
4 year 2000. And basically with Mike Mohajer coming up here
5 a lot, we felt we needed to counter him with our own
6 heavyweight, Mr. Paul Ryan. So with my honor and
7 pleasure, I would like to introduce Paul Ryan today and
8 we'll be teaming a lot of issues such as today.

9 Paul Ryan will be talking about Item 1 and
10 Item 2 about the need to -- under option three, how CRRC
11 supports that. I would like to touch upon option three of
12 Item 3 as I did in my letter of January 17th, 2000 to the
13 Chairman's office and Waste Board Members.

14 My topic is about the diversion study
15 guide. I was able to go to a few of the workshops
16 throughout November. I believe that the diversion study
17 guide was a framework for discussion and for peer review.
18 Throughout November, I believe that the stakeholders had a
19 lot of input, and what we're looking for is some type of
20 review of the input and items for the Waste Board in order
21 to consider the peer review and eventually adopt this
22 diversion study guide.

23 It's been adopted and used on a
24 case-by-case basis. Within the prepared statement inside
25 the inside cover of the diversion study guide it states it

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1 was prepared by staff and that it has not been approved by
2 the Board yet, and we're looking forward to the
3 opportunity to have a peer review.

4 Some of the issues that cropped up on a
5 case-by-case basis have shown that the diversion
6 generation numbers approved some items such as lamb
7 slaughter house waste and dirt at landfills. A lot of
8 issues there within the diversion study guide on a
9 case-by-case basis has occurred. We believe that taking
10 the peer review and bringing that back to the Waste Board
11 for discussion will be the best way to address the
12 diversion study guide. It can still be used on a
13 case-by-case basis and in the interim we don't want to
14 create a logjam for all of the compliance orders that are
15 out there, but eventually we would support the use of the
16 new waste generation study with a peer review of the
17 diversion study guide.

18 CHAIRMAN EATON: Thank you. Any questions
19 of Mr. Edgar? Is Mr. Ryan going to speak?

20 MR. EDGAR: Yes.

21 CHAIRMAN EATON: Mr. Ryan, a man that needs
22 no introduction now.

23 MR. RYAN: Since Evan Edgar and I have been
24 compared to the WWF, I'll have to figure out what my title
25 is.

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1 CHAIRMAN EATON: "The Enforcer" hasn't been
2 used yet.

3 (Laughter)

4 MR. RYAN: I had that title years ago when
5 I was working for San Bernardino County, so I'm not sure
6 if I want to hold that title.

7 In response -- Mr. Chairman and Board
8 Members, in response to Mr. Jones's comments about
9 industry concerns, I have prepared a white paper of
10 somewhat abbreviated form to sort of recap some of the
11 discussions I had with the haulers in the south and with
12 the concurrence of the industry in the north. In part,
13 I'll move down to paragraph three.

14 It is the opinion of the CRRC that the
15 Board should use the 1997-1998 biennial review process as
16 the means to determine who is eligible for consideration
17 of the 1990 base years corrections. In other words, if a
18 jurisdiction has made a good faith effort to request a
19 base year correction for the 1990 base year in either the
20 1997 or the 1998 annual reports and made a specific base
21 year modification request prior to the commencement of the
22 1997-1998 biennial review in February 2000, their request
23 should be heard. All other jurisdictions' request for
24 1990 base year corrections should then be denied.

25 In terms of that, we discussed it and felt

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1 that this would satisfy the provisions of CCR Title 14 and
2 it would be consistent with what the Board has considered
3 in the past in terms of the biennial review. We felt that
4 this action would bypass the arbitrariness of some of the
5 cutoff dates that were proposed at the last Board meeting.

6 And finally, it is the opinion of the CRRC
7 that the Board should use the three-year time frame for

8 record keeping as the time period for base year
9 corrections or modifications for disposal or diversion
10 tonnage amounts. This recommendation would be consistent
11 with the record keeping requirements in CCR Title 14,
12 Section 18802. And then we felt that under certain
13 circumstances this option could be extended to a fourth
14 year to include the period of records archiving and
15 destruction so that within your regulations now you do
16 have a time frame that's been established for facility
17 operators to maintain their records for review by the
18 jurisdictions.

19 With that, I want to conclude that I did
20 clarify with the haulers that they understand that the
21 action that you have before you does not terminate base
22 year adjustments in the future. There was a
23 misunderstanding where some of the haulers thought
24 everything was getting turned off, but we've gotten that
25 corrected.

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1 Thank you.

2 CHAIRMAN EATON: Any questions of Mr. Ryan?

3 All right. Last remaining slip, Mr. Mike
4 Mohajer in opposition. Mr. Mohajer here?

5 MR. MOHAJER: Good morning, Mr. Chair,
6 Members of the Board. My name is Mike Mohajer. I'm with
7 the Los Angeles County Department of Public Works. I
8 believe you have received copies of the action that our
9 L.A. County Integrated Waste Management Task Force took
10 last Thursday, but I brought some extra copies just in
11 case.

12 I do want to thank Evan and Paul for the
13 nice comments, but I also would like to emphasize that AB
14 939 and the penalties are applicable to municipalities and
15 not to the waste haulers. The law very specifically
16 mandate to the counties and the municipalities and not to
17 the waste hauler. The second one, we work very closely
18 with the waste haulers in Los Angeles County and are a
19 member of the Task Force as well, and I just wonder if the
20 opinion was also shared by the haulers that they operate
21 and are permitted to operate in Los Angeles County.

22 With that mentioned, I'm going to read that
23 first paragraph of the letter and address a couple of
24 other issues. On January 25th, the California Integrated
25 Waste Management Board will consider staff recommendation

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1 to set time limits for correction to the base year
2 quantities requested by jurisdictions, not by the waste
3 haulers.

4 On January 20, 2000 the L.A. County
5 Integrated Waste Management Task Force voted to strongly
6 request that this issue be postponed until such time as
7 the Waste Board resolves the outstanding issues
8 surrounding the Disposal Reporting System and the types of
9 solid waste that count and do not count as disposal.
10 These concerns were reported to the Waste Board by the
11 Task Force in its letter of June 7th, 1999. Unfortunately
12 today, resolution of these matters has not occurred.

13 As going further to justify the request of
14 the Task Force, last Thursday the Task Force considered a
15 request of Lakewood in reference to ash from the
16 waste-to-energy facility and when is it going to count as
17 disposal toward the jurisdiction and when does it count
18 when you use the ash as a beneficial use. This issue has
19 been going on for many, many, many years at this Board.

20 Mr. Schmidle was at the Task Force meeting.
21 I'll ask him again if the Waste Board has adopted policy
22 or regulations as to how the beneficial use of that ash is
23 being credited to various jurisdictions, and the response
24 was nothing as of date. So when you look at this issue,
25 this certainly will impact the base year's numbers.

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1 Another example, on November 17 we had a
2 meeting over here about the so-called Class II type waste,
3 and there was a meeting that we had downtown over at the
4 Capital, and the issue was -- from one side they said you
5 needed state law to address the Type II waste, and the
6 other side was no, we try to establish a policy as to how
7 to count it. My understanding was that the issue is going
8 to be addressed through the policy by this Waste Board.

9 So looking at those, again, as the Task
10 Force said, we request that you delay taking action.
11 There's no urgency. And recognize that the L.A. County as
12 a whole and the jurisdiction, we are -- we generate one
13 third of the state's waste and we also divert as least one
14 third of the waste. So you should consider the request,
15 and there is no urgency to take action on this issue
16 today, but should you elect to move forward, then I would
17 also recommend -- and if you look at the staff
18 recommendation item number one, it says with all
19 supporting documentations. And then I strongly also
20 recommend that you define what it means by "all".

21 If you notice, one of the reasons that OAL
22 turned back to Item 29 under regulation for 2136 was that
23 the language in the draft regulation for 2136 again was
24 very unclear as to exactly what is it that the Waste Board
25 wants, or the staff. So that needs to be clarified should

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1 you move ahead and adopt the staff recommendation.

2 So with that in mind I'll be glad to answer
3 any questions you have.

4 CHAIRMAN EATON: Any questions? Mr. Jones.

5 BOARD MEMBER JONES: Mr. Chairman, if my
6 memory serves me right, this Board did come up with a
7 policy in 1996, I think, on how to deal with ash. It's
8 obviously a policy that isn't being followed by the L.A.
9 County Public Works Department because what it said was
10 that ash generated at a facility would be counted towards
11 that facility or used as diversion where the facility was
12 housed or located.

13 But what your Department is doing is
14 misrepresenting the waste that's going into that facility,
15 as came up in the Lakewood item, where if they bring in a
16 thousand tons of waste a day -- which they don't but it's
17 a nice round number -- what you guys do is assign it at
18 700 tons instead of a thousand tons because you're giving
19 them the diversion -- and by the way, that's not right way
20 to do it -- but it's also contrary to the Board's policy
21 and it has created yet again another muddled issue because
22 we're not able to deal with a thousand tons a day coming
23 in, we're dealing with 700 tons a day when in actuality a
24 thousand is coming in.

25 So, you know -- I mean it's okay to come up

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1 here and say that we haven't done a bunch of things, but
2 we have identified the policy, the policy has been
3 enacted, and the L.A. County Public Works Department, I
4 guess, has changed the assignment of waste to
5 jurisdictions that feed these facilities, which distorts
6 the amount of waste going in and the amount of diversion
7 and makes it hard as a policy maker to try to figure out
8 who's on first because we're not getting apples and
9 apples, and that's pretty bothersome.

10 But then the other issue about ash
11 diversion -- because Lakewood talked to and us and talked
12 to our staff and asked about that stuff, and I don't know
13 this to be true. I know that we need to talk about it as
14 a policy issue, but the ash that's coming out of the
15 waste-to-energy facility, if it's been deemed hazardous
16 because of metals, can't be landfilled in its ash --
17 normal ash constituency. It has to be mixed with
18 something -- bentonite, concrete, whatever -- and used as
19 a reuse. Is that recycling or treatment of a hazardous
20 waste? I'm just asking. Is it treatment of hazardous
21 waste or is it --

22 MR. MOHAJER: That is a decision that the
23 Waste Board has to make.

24 BOARD MEMBER JONES: Understood.

25 MR. MOHAJER: That's the decision.

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1 BOARD MEMBER JONES: Understood. So
2 Lakewood is bringing the issue forward and I don't have
3 the problem with having the discussion, but when we go and
4 look at the history of the waste that was in, how much got
5 allocated, how much didn't, how much diversion they got
6 through the reporting system, it muddies the issues up.

7 But I think it's an interesting issue when
8 you look at treatment of ash that would otherwise be
9 termed hazardous, couldn't go to a landfill, wouldn't
10 count as disposal, so you're treating it. It's kind of
11 avoiding cost. It's cheaper than bringing it to a
12 hazardous waste site, so you get diversion credit for it.

13 It's going to be a very interesting
14 discussion at this Board because it's a very valid point,
15 do you get credit for treating hazardous waste.

16 MR. MOHAJER: Responding to your items that
17 you mentioned, Mr. Jones, first of all, as far as this
18 Board having established a policy, as I have mentioned, I
19 asked Mr. Schmidle if there was a written policy and he
20 said -- his response was "no", and if you look at the
21 Waste Board action that you mentioned in 1996, that they
22 have taken that position, absolutely. You can give me a
23 copy. I'll take it back to the Task Force and they will
24 consider it at their next month's meeting. That's number
25 one.

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1 Number two, as far as the Department of
2 Public Works misrepresenting, I really take exception to
3 that statement because that form was established by
4 partnership with your Waste Board through the workshop
5 that we conducted back in '94 and is being used by all
6 facilities. Department of Public Works, every letter that
7 we sent out, we said we do not change any numbers. We
8 submit it as reported to us by the operator.

9 We do not operate any landfill or any
10 waste-to-energy facility. To substantiate what I just
11 mentioned, you look at the City of Commerce that has a
12 waste-to-energy facility and uses the same form that we
13 have handed to all the haulers. Commerce reports it, all
14 ash diversion only to themselves. We don't change that
15 number.

16 So when making that statement that we
17 misrepresent, that is incorrect and unjust. It's really
18 unjust. But it is an issue that needs to be addressed.
19 It is ultimately going to come before this Waste Board
20 because the Lakewood has a concern, Long Beach has a
21 concern, a bunch of other jurisdictions down there, they
22 have concerns. And if there is a written policy, I'll be
23 more than glad to take it before the Task Force and be the
24 left hand or the right hand to the Waste Board to get the
25 issue resolved.

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1 So the idea is not over here to come and
2 misrepresent your directions, your regulations, when the
3 state law comes and go and cause headaches for all the
4 jurisdictions.

5 CHAIRMAN EATON: Okay.

6 BOARD MEMBER ROBERTI: Mr. Chairman.

7 CHAIRMAN EATON: Senator Roberti.

8 BOARD MEMBER ROBERTI: Maybe staff can help
9 me -- what is -- I know Mr. Mohajer is saying there is no
10 policy, but I guess there's a policy on everything -- what
11 is our policy on counting treated ash that goes into a
12 road base in a landfill? Who gets the credit on that?
13 I've been under the assumption after a few briefings that
14 the city in which there is the -- whose jurisdiction
15 covers the incinerator, Commerce or Long Beach, get
16 credit. Is that a hard and fast rule or are there
17 variations?

18 MR. SCHIAVO: There's been two things that
19 have taken place throughout the years. One is in the
20 original base years the host jurisdictions were to
21 include -- they were the only entities to include the
22 ash --

23 BOARD MEMBER ROBERTI: "Host jurisdiction"
24 means?

25 MR. SCHIAVO: Meaning Commerce, Long Beach

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1 or the facility in Stanislaus. In subsequent years, in
2 1996 as Board Member Jones referred to, the Board made a
3 policy decision regarding the host jurisdiction getting
4 the benefit as they're taking the action for what's being
5 diverted.

6 BOARD MEMBER ROBERTI: So is that a
7 universal rule that we follow now?

8 MR. SCHIAVO: That's what we intended. We
9 only found out about what was taking place in the
10 accounting system as a result of the Lakewood
11 jurisdictional issue that we went through the last couple
12 of months, and that's when we uncovered that. The ash was
13 being counted for off of disposal. It was being
14 subtracted from disposal before it was being entered into
15 our Disposal Reporting System, which has the result of the
16 host jurisdiction as well as the delivering jurisdictions
17 getting the diversion benefit.

18 BOARD MEMBER ROBERTI: But Lakewood didn't
19 get any benefit. At least wasn't that an aspect of our
20 vote?

21 MR. SCHIAVO: Well, that's what's in
22 question is who does get the benefit.

23 BOARD MEMBER ROBERTI: Well, no, no, no.
24 I'm trying to recollect. It's vague now. I apologize to
25 the Members when I rehashed that one.

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1 CHAIRMAN EATON: Thank you.

2 BOARD MEMBER ROBERTI: Wasn't that part of
3 our decision process, that Lakewood not get benefit and
4 weren't they saying that they were entitled to the
5 benefit? And when the majority cast its vote to put
6 Lakewood under compliance order, wasn't that based on the
7 fact that we didn't buy Lakewood's accounting?

8 MR. SCHIAVO: Right.

9 BOARD MEMBER ROBERTI: So in effect that is
10 part of our policy. Our policy is that the delivering --
11 maybe there's not a formal rule, although I suspect there
12 may be, that the delivering jurisdiction doesn't get any
13 credit for this.

14 MR. SCHIAVO: Right. That's the action the
15 Board took in 1996.

16 BOARD MEMBER ROBERTI: Right. That we
17 reinforced on the Lakewood decision.

18 MR. SCHIAVO: Right. What I meant by "in
19 question" is they keep questioning the policy.

20 BOARD MEMBER ROBERTI: I got you. So let
21 me ask Mr. Mohajer. Is it the feeling -- is the County --
22 do the jurisdictions in the county operate on that premise
23 that it's the host jurisdiction that gets the credit, or
24 are you still questioning that? And if so, on what
25 authority?

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1 MR. MOHAJER: What the Task Force voted
2 last Thursday -- that there's going to be a letter coming
3 to the Board -- they are requesting that the Waste Board
4 makes the decision. The decision belongs over here, not
5 to what individual jurisdictions want to do. There's got
6 to be a uniform policy throughout the state. So City of
7 Lakewood requested that diversion credit is going to be
8 based on the quantity of waste that is being taken to the
9 facility. However, the Task Force voted that the decision
10 is going to be made by the Waste Board and that's what the
11 request is.

12 So if there is a policy, written policy, as
13 Mr. Schiavo indicated, would you -- I would like to have a
14 formal letter submitting that written policy with a copy
15 of it, and I'll be more than happy to take it to the Task
16 Force next February and carry the ball from there. That's
17 all we're asking. We're not asking to change your rules
18 just for any jurisdiction, including the L.A. County
19 Public Works for that matter, Mr. Jones.

20 CHAIRMAN EATON: Thank you, Mr. Mohajer.

21 MR. MOHAJER: Thank you.

22 CHAIRMAN EATON: All right. That completes
23 the public comment.

24 Members.

25 BOARD MEMBER JONES: Mr. Chairman.

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1 CHAIRMAN EATON: Mr. Jones.

2 BOARD MEMBER JONES: I'm just -- I'm going
3 to throw something out for discussion with the Board
4 Members. This idea about the '97-'98 biennial review and
5 was a request made at that time during that process, it
6 seems to me it would be a pretty reasonable way to get to
7 what's in the pipeline and what isn't because as
8 jurisdictions are doing this, if they see problems in that
9 computer model that their numbers aren't right, they
10 notify staff right away that well, we're going to have to
11 do some adjustment. This thing doesn't make any sense.
12 Is that pretty accurate the way it works? If they see a
13 problem and they notify whoever, you guys have assigned as
14 staff to that jurisdiction. So that really starts the
15 process as to okay, maybe there is a problem.

16 One of the things that I think is important
17 about that is we've talked and talked about the fact that
18 we have an infrastructure, and if we keep adjusting these
19 numbers, does it reflect those people going around the
20 infrastructure from generator to landfill for a cheaper
21 cost than going through an infrastructure. And we've got
22 to be careful that we're not just going back and changing
23 numbers because that's not fair to the jurisdiction that's
24 invested the dollars, if those generations are going
25 around it.

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1 So I like this idea of this '97-'98
2 biennial review being notified. I like that, and I think
3 the last time we had the discussion of three years from
4 any given time forward made everybody comfortable. I
5 think somebody said two. I don't really care if it's two
6 or three. I guess it would be -- if it's -- and the
7 information should be available irregardless.

8 BOARD MEMBER ROBERTI: I don't have -- I
9 don't have a problem if it's two or three. However, if
10 we're up to snuff and have the data to make it two, why
11 can't we just make it two?

12 BOARD MEMBER JONES: Sure.

13 BOARD MEMBER ROBERTI: Is that --

14 BOARD MEMBER JONES: Although,
15 Mr. Chairman, maybe because of our work trying to get
16 through the Disposal Reporting System issues where waste
17 is being misallocated, maybe if we have a three-year
18 window, if there was some unusual anomalies where material
19 was being assigned and we don't have that fixed yet or we
20 haven't worked with those jurisdictions, that may give a
21 jurisdiction a little more room to pick one of three years
22 instead of two years of it being bad, that might be a more
23 prudent way --

24 BOARD MEMBER ROBERTI: I don't have a
25 problem with that.

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1 BOARD MEMBER JONES: Is that okay?

2 BOARD MEMBER ROBERTI: Mr. Schiavo is
3 shaking his head.

4 CHAIRMAN EATON: So if I understand,
5 Mr. Jones, what you're saying is we would basically --
6 whatever that demarcation line is using the '97-'98
7 biennial review as part of the criteria for the cutoff.

8 BOARD MEMBER JONES: If jurisdictions have
9 notified --

10 CHAIRMAN EATON: I got you. But the
11 question I have, and I agree with the two or three years,
12 it's fine with me, and the biennial review, but there are
13 some that are already that you're working on. And the
14 reason I mention west Contra Costa County, which has been
15 in the pipeline for sometime, if they didn't put in their
16 '97-'98 review, you've been working with them for a while.

17 BOARD MEMBER JONES: I had assumed that
18 was --

19 CHAIRMAN EATON: It's the ones in the
20 pipeline, I assume, so it's not just the biennial reviews
21 but those that are in the pipeline as of this motion,
22 whatever you bring. Is that fine?

23 BOARD MEMBER JONES: Yes. And also those
24 that are in compliance orders with the Board where we are
25 working on -- some of those compliance are talking about

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1 either base year adjustments or new base years. So if --
2 this is going to be fun. Okay.

3 CHAIRMAN EATON: You told the person that
4 was on the phone that you're working, so go ahead and make
5 the motion.

6 BOARD MEMBER JONES: I want to move
7 adoption of --

8 BOARD MEMBER MOULTON-PATTERSON: I just
9 have one question, Mr. Jones.

10 CHAIRMAN EATON: Wait a minute, Mr. Jones.
11 Ms. Moulton-Patterson.

12 BOARD MEMBER MOULTON-PATTERSON: I know
13 more or less I'm in agreement, and three years is probably
14 better than the two to be fair and all that, but I know
15 there was a concern -- I'm trying to remember -- at our
16 last meeting that people -- that the cities would hear
17 about this and there would be a rush. And this March
18 31st, that's not going to happen, is it? They would have
19 had to have let you know pretty much. You would have had
20 some indication by this motion.

21 MR. SCHIAVO: We have most of the annual
22 reports already submitted to us, and most of those will
23 indicate whether or not they have requested a base year.
24 Plus if they didn't formally include it in the annual, we
25 heard from them --

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1 BOARD MEMBER MOULTON-PATTERSON: So you
2 have something.

3 MR. SCHIAVO: -- as part of the process.
4 Right.

5 BOARD MEMBER MOULTON-PATTERSON: Okay.
6 Thank you.

7 CHAIRMAN EATON: All right. Mr. Jones.

8 BOARD MEMBER JONES: Are there any other
9 issues or are we just --

10 MR. LEARY: Let me just make one
11 clarification. I don't know that what's been proposed
12 here by CRRC is significantly different than what we
13 proposed in our recommendation.

14 BOARD MEMBER JONES: Right.

15 MR. LEARY: I think we're normally going to
16 consider these base year adjustments as part of the annual
17 review, and if they have an intention, I think the March
18 31st is a less severe cutoff than possibly what's proposed
19 here. This language seems to indicate that a jurisdiction
20 would want to have their request in prior to the Board's
21 initiation of the biennial review process next month,
22 which would in essence make next month's Board meeting the
23 cutoff date rather than the March 31st date we proposed.

24 Also, there's an additional issue of there
25 are '97-'98 annual reports that are outstanding. If --

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1 does this provide possibly incentive to those
2 jurisdictions who have outstanding '97-'98 annual reports
3 to have them remain outstanding while they're deciding
4 whether they need to go forward with a base year
5 correction. I would just respectfully suggest that the
6 way we crafted our recommendation, March 31st may be a
7 little cleaner than trying to link it too closely to the
8 submittal of the '97-'98 annual reports in the biennial
9 review process that we are about to undergo.

10 BOARD MEMBER JONES: I think you've
11 convinced me, but what I don't have here -- okay. So your
12 staff recommendation was recommendation number one; right?

13 MR. LEARY: Option number three with the
14 three conditions.

15 BOARD MEMBER JONES: To approve changes in
16 measure to more recent calendar years supported by new
17 generation study corrections to the disposal system. I'm
18 going to try to craft this thing now.

19 CHAIRMAN EATON: Mr. Cupps, you obviously
20 wanted to be heard on this. You got in late. Go ahead.

21 MR. CUPPS: Well, I guess I'm a little bit
22 unclear as to what the motion is and some of the potential
23 impacts, so it might be useful for me to layout a
24 situation that is potentially hypothetical but perhaps
25 very real world.

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1 I'm a consultant to the San Luis Obispo
2 Integrated Waste Management Authority. We are in the
3 process -- we are under a compliance order. We have
4 completed a new base study. We've had extensive
5 discussions with staff. That new base year study is based
6 upon 1997 data. We're in agreement with staff now on
7 what's currently in there, but frankly there were a lot of
8 discussions and debates about what certain things counting
9 and not counting.

10 Let me just give you one example. One is
11 Class II waste. One of our jurisdictions that is a member
12 of the Authority got hit with about 11,000 tons of Class
13 II materials that had gone to Forward, Inc., and we said
14 okay. Fine, we'll swallow that. At some point we might
15 want to come back and argue that okay, if you're going to
16 count that, there was also a lot of contaminated soils
17 that were in fact treated and recycled and never disposed
18 of and frankly make the argument that those should count
19 towards diversion.

20 We didn't do that in the interest of
21 getting -- we're under compliance order. We wanted to get
22 the study done. The point is that we're working with 1997
23 data. This Board is going to be considering action upon
24 that new base year study presumably next month, but
25 because of some of the uncertainties surrounding the Class

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1 II issue, there may be things that we want to come back,
2 if you will, and argue about over that data in a
3 subsequent year. And I guess it's not clear to me from
4 the discussion I've heard so far as to whether or not we
5 would be precluded from doing that. I think that --

6 CHAIRMAN EATON: I think he mentioned
7 compliance orders as part of that. You may not have heard
8 that, but he mentioned -- Mr. Leary mentioned compliance
9 order.

10 MR. CUPPS: Well, I heard compliance
11 orders, but we're under a compliance order, and once --

12 CHAIRMAN EATON: So that would --

13 MR. CUPPS: -- the Board approves it, we're
14 out from under the compliance order at that point. But if
15 we want to come back and argue next year, say we're a
16 little bit below the 50 percent and if we could get
17 credit --

18 CHAIRMAN EATON: Then I think that the
19 Board's aspect is we'll handle a lot of those with the
20 1066 program as well in three years.

21 MR. SCHIAVO: And also the three-year
22 provision would handle that.

23 MR. LEARY: In other words, John, you've
24 established 1998 as your new base year, then you would be
25 able to modify that base year up to three years subsequent

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1 to 1998.

2 MR. CUPPS: I believe it was 1997 data.

3 MR. LEARY: Was it '97 or '98?

4 MR. SCHIAVO: It can always be as of the
5 approval date of the new generation study.

6 BOARD MEMBER JONES: Wait. Wait.

7 Mr. Chairman, I want to make this motion, but I've got a
8 fundamental question here. The material, the contaminated
9 soil or whatever it was that got treated, and I realize it
10 could have been treated on-site, aerating it, turning it
11 with a hoe, whatever, it had to be done under somebody's
12 supervision. Did it happen in 1997? Or whatever year
13 you're using as your base year.

14 MR. CUPPS: Yes. I believe it did.

15 BOARD MEMBER JONES: Then why wouldn't you
16 include it in generation as a recycling activity?

17 MR. CUPPS: Frankly, we didn't get the
18 letter notifying us that we had to count the 10,000 or
19 11,000 tons until after we already completed the study.

20 BOARD MEMBER JONES: Oh, okay.

21 MR. CUPPS: And in the interest of moving
22 forward, we decided -- we just made the decision that, you
23 know, we'll go ahead and take that and we didn't feel we
24 had time to go and adequately document the amounts that
25 were indeed diverted, although we've done some initial

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1 work and identified that there were significant quantities
2 there.

3 My point is that we've got 1997 data. The
4 Board is going to be acting upon that in 2000, and rather
5 than raising the arguments in the interest of getting the
6 thing done, we've said okay. Let's -- we'll take the
7 11,000-ton hit, we won't even argue about the treatment
8 right now, but at some point I think we might want to come
9 back and make that argument. And I just want to be sure
10 that we're not being -- if the cutoff is indeed three
11 years, does that mean that we basically have to make that
12 argument basically before the end of 2000. That's my
13 point.

14 CHAIRMAN EATON: Mr. Leary.

15 MR. LEARY: It could be -- I assume you can
16 interpret our condition two to mean four or if modified to
17 three calendar years of the approval of the new base year.
18 And so, John, your situation would have three years from,
19 say, next month, your base year change be approved.

20 MR. CUPPS: Thank you.

21 CHAIRMAN EATON: Okay. Mr. Jones.

22 BOARD MEMBER JONES: Mr. Chairman, in
23 reading this resolution, which I'm assuming is still
24 1999-38, even though this is year 2000. I want to move
25 adoption of 1999-38 to include in item number two to say

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1 three calendar years, and to include the date of March
2 31st, 2000, and include cities and counties that are on
3 compliance orders and those that identified -- those that
4 made the Board aware through the '97 and '98 biennial
5 review process, just to make sure that those three issues,
6 which ultimately are your -- oh, as of this date through
7 the biennial review process as of today, 25th of --
8 because you said that they were all due.

9 MR. LEARY: They're overdue now. They were
10 due -- '98 reports were doing August 1st, '99.

11 BOARD MEMBER JONES: August 1st? Okay. So
12 those biennial reviews that have been received as of
13 today's date.

14 CHAIRMAN EATON: All right. Second? I'll
15 second.

16 Mr. Jones moves and Mr. Eaton seconds that
17 we adopt Resolution 1999-38 as amended.

18 Madam Secretary, please call the roll.

19 BOARD SECRETARY: Board Members Jones.

20 BOARD MEMBER JONES: Aye.

21 BOARD SECRETARY: Moulton-Patterson.

22 BOARD MEMBER MOULTON-PATTERSON: Aye.

23 BOARD SECRETARY: Pennington.

24 BOARD MEMBER PENNINGTON: Aye.

25 BOARD SECRETARY: Roberti.

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1 BOARD MEMBER ROBERTI: Aye.

2 BOARD SECRETARY: Chairman Eaton.

3 CHAIRMAN EATON: Aye.

4 Members, we'll take a short ten-minute
5 break, our morning break, and we'll return to our next
6 item at about 11:10. Thank you.

7 (Brief recess taken)

8 CHAIRMAN EATON: Welcome back, everyone.

9 We'll kind of move along. Thank you. All right.

10 Members, any ex parte communications?

11 Mr. Pennington.

12 BOARD MEMBER PENNINGTON: Mr. Chairman, I

13 spoke with Mr. John Loriman on various subjects, but
14 nothing too much.

15 CHAIRMAN EATON: Mr. Jones.

16 BOARD MEMBER JONES: Actually, just briefly
17 with Mr. Mohajer on the existence of a policy.

18 CHAIRMAN EATON: Senator Roberti, anything?

19 BOARD MEMBER ROBERTI: No.

20 CHAIRMAN EATON: And I just also said hello
21 to John Loriman, just kind of a meet-and-greet and Terry
22 Lavelle regarding the agenda item dealing with the tire
23 report legislation.

24 Okay. Next item is Item D, continued
25 consideration of report to the legislature.

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1 Ms. Judy Friedman.

2 MS. FRIEDMAN: Thank you. Good morning,
3 Chairman Eaton and Board Members. For the record, I'm
4 Judy Friedman, as said before. The supplemental report,
5 the Budget Act of 1999, requires the Board to report to
6 the Chairs of the Fiscal and Pertinent Policy Committees
7 of both houses on or before January 10th original language
8 on A, the status of the Board's implementation of the
9 Integrated Waste Management Act of 1989; and B, actions
10 necessary to ensure compliance with the Act's provisions
11 including landfill permitting requirements. Please note
12 the Board is requesting an extension for this report until
13 March 2000.

14 Since August, I have been overseeing the
15 development of a report to fulfill this requirement. The
16 process has been to work with staff throughout the Board
17 to develop this report through brainstorming and
18 discussion sessions initially.

19 First, working with senior management in
20 each division and office we developed an outline which was
21 reviewed by advisors and sent to the Board Members. The
22 outline was used as a general guidance to report
23 preparation. Second, we began to fill in the report with
24 material that was developed by staff and through their
25 respective management. Third, we began to fuse all of the

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1 material into a first draft report that was delivered to
2 the Board Member offices in November of 1999.

3 In this effort, Debra Kustic was my
4 assistant project manager, Maureen Goodall was chiefly
5 responsible for overseeing the graphics, and I also wish
6 to acknowledge Mitch Delmage who volunteered his time and
7 assisted tremendously on development of graphics and other
8 material. I wish to thank him and everyone on the team
9 for helping to produce this document. I also wish to
10 acknowledge all of the staff for all the divisions for
11 their contributions to the report.

12 Since late November I have been working
13 with advisors and meeting with Board Members to review and
14 get input into the report. Over the last two weeks this
15 effort intensified to bring us here today with the draft
16 report for your consideration. The effort over the last
17 two weeks concentrated on the first two sections of the
18 report.

19 So what does this document say? In
20 addition to an executive summary, it is organized in three
21 main parts. The first part provides the historical
22 context, the legislative history, and the pre-Act setting
23 that led up to the enactment of the Integrated Waste
24 Management Act we commonly refer to as AB 939.

25 The second part is a review of the

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1 implementation of the Act in the decade since its passage
2 which also corresponds to Part A of the requirement in the
3 Supplemental Budget Act.

4 The third part has two main aspects.
5 First, it provides the discussion of actions necessary to
6 fulfill the provisions of the Act which corresponds to
7 Part B of the requirement. Second, it raises issues that
8 go beyond the confines of the Act, including future
9 trends.

10 If I were to summarize in a very few words
11 what the results of our analysis and this report says, I
12 would say that in the decade since the Act's passage, we
13 have made tremendous progress in meeting the mandates,
14 there has been a shift in the way we think about waste and
15 how we manage it statewide, and there has been a huge
16 investment in the development of the Integrated Waste
17 Management structure that corresponds to this shift.
18 However, we do have more to do in areas ranging from Board
19 policy to issues of accountability and enforcement to
20 fully meet all of the mandates.

21 Finally, we need to look beyond the
22 confines of the Act and determine the best course for the
23 future given the trends and issues that we see on the
24 horizon. It is my intention to revise this report based
25 upon direction I receive today, and I plan to come back to

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1 the Board at the end of February for consideration of the
2 final report.

3 Over the next month I'll be concentrating
4 on section three of the report. Several issues need
5 really to be decided including what are the key
6 recommendations that the Board wishes to send to the
7 legislature and to what extent and how specific should the
8 recommendations be. The types of recommendations that are
9 currently included in the report are actions necessary to
10 ensure compliance with the Act. These are the things that
11 we believe must happen in order to achieve full compliance
12 and two, beyond the Act. These are things that go beyond
13 the confines of the Act and look at future trends and
14 issues.

15 So what I'd really like from you today, if
16 I could, is some input into those areas. And they really
17 range from Board policies such as the development of SB
18 1066 and year 2000 enforcement, agency accountability,
19 market drivers, education outreach, environmental health
20 and safety. And even beyond the Act they go into the 21st
21 century project areas of regulated facilities, alternative
22 disposal methods such as bioreactor landfills, regulatory
23 bioenergy plants, regulatory innovation, and fees and
24 funding issues for all three of the Board's accounts.

25 If there are any areas that you feel should

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1 be covered and have not been, or if there are areas that
2 you feel should be emphasized, I would welcome your input
3 today and over the next month. In addition, please, if
4 you could, share with me how specific you wish the
5 recommendations should be.

6 At this time I conclude my presentation and
7 I look forward to your input.

8 CHAIRMAN EATON: Ms. Moulton-Patterson.

9 BOARD MEMBER MOULTON-PATTERSON: Thank you,
10 Chairman Eaton. I apologize for coming in late and I did
11 have a question. As far as comments from different Board
12 Members on the future section, when do you need those by?

13 MS. FRIEDMAN: Whenever you can provide
14 them, as soon as possible, today if you can. If not, over
15 the next week or so is when we're really going to be
16 concentrating on finalizing that and we'll be having
17 discussions with all the Board Member offices and their
18 advisors.

19 BOARD MEMBER MOULTON-PATTERSON: One of the
20 things that we're trying to do is get together a meeting
21 on public schools -- not just public education, but the
22 public schools -- and we'd like to see that included. And
23 we'll try and get back to you just as soon as possible and
24 talk with my colleagues and see if they are in agreement,
25 but I would like to see that emphasized in the future

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1 section.

2 MS. FRIEDMAN: So noted.

3 BOARD MEMBER MOULTON-PATTERSON: Thank you.

4 BOARD MEMBER JONES: Mr. Chairman.

5 CHAIRMAN EATON: Mr. Jones.

6 BOARD MEMBER JONES: I want to -- I want
7 to -- first of all, I'll give you some remarks on section
8 38 next week, but I wanted to let the other Board Members
9 know and the public to know that this was an incredible
10 effort taken on by Judy, that it came in a form that you
11 would expect and we worked pretty hard to make sure that
12 we told the story. And I think that people -- I think
13 Arnie needs to be recognized besides Judy. I think Arnie
14 needs to be recognized, Jeff Danzinger, Terri Cronin did
15 an incredible job, and then the staff -- Chris Peck was in
16 these meetings continually, but staff came forward -- just
17 so you know, staff and Deputy Directors came forward on
18 each section as we went line-by-line and Judy was trying
19 to change stuff around on the computer and staff had cases
20 of hours to totally rewrite sections or make any
21 adjustments and get it back into the computer by that
22 night so we could have a meeting the next day.

23 The effort was incredible, and I think from
24 a historical standpoint they wanted me involved in parts
25 of this thing. And I have to tell you, when you're laying

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1 the story out about what has happened in the last ten
2 years in this state, cities, counties, and the citizens of
3 this state have done an awful lot to get us where we're
4 at, and I think that's indicative in this document.

5 And while Mr. Cupps was nervous about
6 something in the future, I had to tell him we were so busy
7 working on the first sections, I never even spent any time
8 looking at the future search. I wanted to be sure we had
9 the past and the present nailed down the right way. I
10 just want to commend staff and Mr. Chairman and Board
11 Member Patterson. The efforts by Arnie and Terri Cronin
12 were stellar, just absolutely amazing, and you should just
13 take some real pride in that.

14 I know other advisors and analysts were
15 involved, but they were kind of saddled with the chore of
16 having to sit around the table for six, seven hours a day,
17 and they did a heck of a job.

18 CHAIRMAN EATON: Does that mean we get our
19 staff back now, Mr. Jones?

20 BOARD MEMBER JONES: Probably.

21 (Laughter)

22 CHAIRMAN EATON: Ms. Moulton-Patterson.

23 BOARD MEMBER MOULTON-PATTERSON: Thank you,
24 Mr. Jones, for bringing that up, and I wanted to say Judy,
25 I think you have done a fantastic job with this. And I

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1 know Arnie and Jeff and Terri, along with Mr. Jones, have
2 spent hours and I certainly appreciate it and thank you
3 very much.

4 BOARD MEMBER ROBERTI: Mr. Chairman.

5 CHAIRMAN EATON: Senator Roberti.

6 BOARD MEMBER ROBERTI: I want to second
7 Mr. Jones's and Member Moulton-Patterson's commendations
8 on all the staff, Ms. Friedman, in putting together an
9 excellent document, thorough and to the point. However,
10 based on what I've also said in private conversations, I
11 want to throw something else out.

12 CHAIRMAN EATON: Absolutely.

13 BOARD MEMBER ROBERTI: And it's not to be
14 construed even remotely as a criticism but as just a view
15 of who's going to be reading this, and we hope that
16 legislators and press will be reading it. So I hope that
17 before we formally publish this, that it be gone over one
18 more time for strong English. There aren't enough layman
19 words in the document. And I'm not being critical, I'm
20 just saying we want to put our best foot forward. One
21 thing I found on the road ahead, expanding recycled
22 content product RPPC purchases. That doesn't stir the
23 soul. There's a way of using the word recycled that will,
24 but that's not it.

25 I'm being picky, but I'm just saying that

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1 whoever reads this, and we want -- whoever the press is
2 that picks this up to say hey, these people have really
3 done something and have a plan to go somewhere, and it
4 cannot be with diversion talk. Otherwise, we're going to
5 have a great document that nobody is going to read. So I
6 think it has to be gone over one more time, especially the
7 preface and the executive summary. And I don't want that
8 to be construed -- the material in here is excellent.
9 It's excellent. It certainly covers the field to an
10 extent that I didn't think you could put in all of this
11 and in relatively few pages, which is very good too.

12 So I don't want it to be considered
13 critical at all, but I am thinking in terms of press and
14 hopefully legislators looking at our recommendations, and
15 I think we need one more time for a little plain English.

16 CHAIRMAN EATON: I think that's an
17 excellent suggestion and we will do that. It's my
18 understanding, at least in addition to your comments, that
19 Ms. Moulton-Patterson, we will include an education
20 section in there no matter how long or whatever it takes
21 to work in there. And also I think some of the issues
22 that you've raised in the past as we get into issues which
23 may not be our charge -- I know you're talking about
24 household hazardous waste and paints and reuse, and I
25 haven't had a chance to kind of go through some of those

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1 things yet.

2 BOARD MEMBER ROBERTI: Where to go in the
3 future.

4 CHAIRMAN EATON: Where to go in the future,
5 and hopefully now that we have that, all of the
6 individuals can do it. If we can perhaps put it to you
7 and you'll get it back to us like February 11th or 12th,
8 that will still give us plenty of time as a Board to look
9 at another edit as it relates to those words. It should
10 be noted as well that the legislature did grant us an
11 extension and also granted us permission to allow this
12 report to be used in lieu of our annual report
13 requirements. So that helps us as well.

14 And I think plain English is as important
15 there given the fact, so I think those are both two
16 excellent comments, and then whatever we can do to move
17 that, that would be the direction to the staff,
18 Mr. Chandler, if we can get that done. So with that --

19 MR. CHANDLER: That's fine. That sounds
20 very good.

21 CHAIRMAN EATON: All right. I don't think
22 we need a motion; do we? Just bring it back for February
23 per our direction. Okay?

24 MS. FRIEDMAN: No problem.

25 CHAIRMAN EATON: Okay. Thank you.

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1 Next item, that would be a continued item,
2 Item Number E, disclosure of inappropriate disposal by the
3 public at sites operated by Goodwill Industries and other
4 similar non-profit charitable organizations.

5 Ms. Bendan Blue.

6 MS. BLUE: Good morning, Mr. Chairman and
7 Board Members. My name is Bendan Blue with Board Member
8 Roberti's office. I bring to you today an issue that was
9 brought to our attention in the fall, the issue of
10 excessive waste being disposed at charitable organizations
11 like Goodwill and Salvation Army. I have a brief video
12 clip to show you, and Hugh Barnett from Goodwill
13 Industries in Santa Clara County will give us a
14 presentation.

15 (Video presentation)

16 MS. BLUE: I'd like to introduce Hugh
17 Barnett from the Santa Clara County Goodwill Industries.
18 He's the CEO.

19 Mr. Barnett.

20 MR. BARNETT: Thank you.

21 CHAIRMAN EATON: Welcome.

22 MR. BARNETT: I'm Hugh Barnett, President
23 of Goodwill of Santa Clara County. I'm actually here
24 representing 14 Goodwills in California. We do -- I think
25 that video clip probably tells you better than anything I

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1 could say about the nature of the problems that we face in
2 the nature of our business.

3 Just a little bit of background, and I'll
4 be relatively brief here, but there are 14 Goodwills in
5 California. We're each actually Thomas organizations.
6 Goodwill is more of a federation. We're each governed by
7 a Board of Directors that are local volunteers from
8 organizations and companies within our own territories.

9 In my case, we serve Santa Clara and San Benito Counties,
10 and each of the other Goodwills serve similar counties.

11 So we're very much focused on our
12 community rather than anything more nationwide, but we do
13 gather together to discuss statewide issues, and one of
14 the ones that is certainly a major problem for us and has
15 been growing is the after-hours dumping at our sites.

16 As you probably know, we operate thrift
17 stores. We rely on the public to donate goods, as you saw
18 here, primarily during daylight hours. We staff our
19 trailers, which are our donation collection centers,
20 during daylight hours or business hours, but we don't
21 staff them 24 hours a day. And the problem occurs usually
22 after hours when some people who are well-meaning will
23 bring something because they didn't make it during
24 daylight hours and they'll leave something that is
25 reasonably good for resale, but there are also scavengers

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1 during those hours and make off with some of the things at
2 those sites.

3 But the worst problem for us is the dumping
4 that occurs of anything, paints and solvents to tires to
5 refrigerators to many things that we don't accept or can't
6 sell. So I wanted to bring this to your attention today
7 as to the magnitude of the problem for us and seek some
8 assistance from you in looking at ways we might be able --
9 at least Goodwill might -- and I'm speaking Goodwill, but
10 Salvation Army and Saint Vincent de Paul, all three of us
11 operate in a similar manner. And although I'm not
12 representing those other two organizations, we do work
13 with them in other ways and I know that they have similar
14 problems.

15 So in fact to give you some idea, for
16 Goodwill alone in California it costs us about \$2.5
17 million a year just to take care of the after-hours
18 dumping, things that are dumped on our sites. This does
19 not include the cost associated with collecting those
20 things which are saleable in our stores. So that's \$2.5
21 million. If we factored in Salvation Army and Saint
22 Vincent de Paul, I would estimate it would be \$4 and maybe
23 \$5 million would be the cost that we take away from
24 services that we provide in order to pay for these
25 services.

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1 Now, what are we doing about it? Well, to
2 give you an example in Santa Clara County's case, we work
3 very closely with local government, specifically with the
4 City of San Jose and with Santa Clara County, to reduce
5 the fees, their government fees. When we have hauling
6 that takes place, there's a government fee on the
7 franchisor usually, a franchise fee it's called, a
8 government fee on the landfill, and then there's
9 government fees associated with AB 939, the recycling
10 efforts over time.

11 In our case, government has worked with us
12 to free us of those fees so that the only costs we incur
13 are the costs to pay the hauler, which in our case happens
14 to be BFI, or the cost to pay the landfill, but not the
15 government fees. Government has basically exempted or
16 reimbursed us for those fees. Other Goodwills are trying
17 to take similar action to at least reduce that part of it.
18 We still have a very significant part. This \$2.5 million
19 I talked to you about is the actual amount that it's
20 costing us after being exempt from some of the fees that
21 government has helped us with.

22 I won't go into a lot of detail. You have
23 a folder here, which you should have, which one, describes
24 briefly what Goodwill does, but two, is a two-page
25 position paper on the nature of the dumping, the nature of

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1 the problem and how extensive it is for us. I think you
2 can read that and I don't want to just repeat what is
3 already said there.

4 I do look forward to having some help from
5 you or suggestions as to how we might perhaps have some of
6 the costs offset or some other ways to reduce the amount
7 of dumping that occurs after hours.

8 Thank you very much.

9 CHAIRMAN EATON: Thank you.

10 Senator Roberti.

11 BOARD MEMBER ROBERTI: Mr. Chairman, I want
12 to thank Mr. Barnett for coming. I visited Goodwill in
13 Los Angeles, by the way an excellent program. I had to be
14 reminded that Goodwill does numerous other things besides
15 taking in usable old clothes, training programs and all
16 sorts of things that I think is good to remind, but I
17 guess they're the original recyclers.

18 MR. BARNETT: That's correct.

19 BOARD MEMBER ROBERTI: I would hope maybe
20 that staff be directed through Mr. Chandler to maybe have
21 workshops or something to come back to us as to what we
22 can do because obviously it's not upon charitable
23 organizations or non-profits to bear this burden that's
24 not theirs. So I don't know if we have any existing rules
25 in this area, but maybe something can be devised, some

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1 assistance so we get on the program right away, and I
2 guess Ralph would be the person to start putting this
3 together.

4 CHAIRMAN EATON: I think that's a great
5 suggestion and we could find out whether there's patterns.
6 There are instances where people have been caught, I
7 assume. Is there any pattern to it? Is it people like
8 businesses? We don't have any information, and I think
9 the workshops would provide a great opportunity to get
10 that kind of input so whatever we craft we'll craft with
11 some level of information.

12 BOARD MEMBER ROBERTI: Frankly, I think
13 some of the people are very well-meaning. They don't
14 realize that everybody can't take the garbage. The dirty
15 old mattress isn't something that can be reused and
16 recycled, it's got to go to the landfill.

17 CHAIRMAN EATON: Mr. Chandler.

18 MR. CHANDLER: Only --
19 Ms. Moulton-Patterson, did you wish to --

20 BOARD MEMBER MOULTON-PATTERSON: I was just
21 going to say I agree with that. I know it's a big problem
22 in Orange County. I know -- I'm not sure if it's Goodwill
23 or Salvation Army, but the ones that I've observed it's
24 clearly posted they're not going to take old mattresses
25 and things, and people are still dumping them there. It

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1 seems like there should be something. I don't know if
2 it's local enforcement or whatever, but I would be very
3 interested in finding out.

4 CHAIRMAN EATON: Mr. Jones.

5 BOARD MEMBER JONES: I'm just wondering on
6 the -- you've got the local governing bodies waiving some
7 fees and stuff like that in certain jurisdictions. I was
8 a hauler and worked with agencies like yours for a number
9 of years. We used to contribute an awful lot to try to do
10 that, but in some jurisdictions and I'm wondering, have
11 you done any work or has there been an effort to stop
12 accepting that material in evening hours where they've
13 posted no drop-offs? The scavengers that -- besides the
14 illegal dumping, the scavengers getting in there and
15 taking the stuff that really has value that you never get
16 a chance to see doesn't work either for you, I wouldn't
17 think.

18 I'm wondering has any of your members of
19 your organizations worked to secure sites or at least post
20 them through local ordinances that it not be allowed to
21 drop off material except during business hours, or do you
22 see that as a down side for you because of the convenience
23 factor?

24 MR. BARNETT: No. We have signs posted in
25 our case indicating what hours we're open and when we

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1 accept goods. And we do have signs also that indicate no
2 illegal dumping of certain types of material. Sometimes
3 we make provision for a place where a bin where somebody
4 can put something in that would be a bag of clothing or
5 something like that, but that doesn't discourage the major
6 dumping.

7 And it's not just individuals. We find --
8 we come one morning -- and we make a tour of all sites
9 before dawn and actually pick up because if we don't make
10 those sites clean, the public is not going to come or be
11 interested in coming to a dirty site where there's a pile
12 of garbage there, so we have to pick it up before dawn.

13 But we get dumping of 14 tires or ten
14 refrigerators, those are not individuals. Those have to
15 be businesses or some other organization. To answer your
16 question, we do post signs about illegal dumping and when
17 we're open and when we accept, and we do not accept after
18 hours. The sign, in our case, is posted.

19 BOARD MEMBER JONES: Right. Would the
20 local governing body enforce that for you through their
21 police department?

22 MR. BARNETT: We report it, but their staff
23 then, they do get around periodically. Officially, since
24 the property is not ours, we could rely upon public -- the
25 local government to pick it up, but in fact, if we didn't

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1 pick it up, it would discourage donors, so we end up doing
2 it anyway.

3 BOARD MEMBER JONES: Okay.

4 BOARD MEMBER PENNINGTON: Mr. Chairman.

5 CHAIRMAN EATON: Mr. Pennington.

6 BOARD MEMBER PENNINGTON: It obviously is a
7 problem and one with some pretty good magnitude if it's
8 costing these non-profits as much as \$5 million a year.
9 So I would just encourage that we go the route of having
10 the workshops and see if we can't find an equitable way to
11 deal with this, and certainly appreciate your efforts
12 here.

13 CHAIRMAN EATON: Thank you, Mr. Barnett.

14 MR. BARNETT: Thank you very much.

15 CHAIRMAN EATON: Thank you. I guess the
16 two of you can get in touch and the appropriate people and
17 get the process moving.

18 MR. BARNETT: We like that and we welcome
19 that.

20 CHAIRMAN EATON: Thank you for taking the
21 time today. We did the consent calendar.

22 New business agenda items, Item Number 1.

23 BOARD MEMBER JONES: 2.

24 BOARD MEMBER PENNINGTON: Item Number 1
25 which was really Item Number 2.

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1 CHAIRMAN EATON: Right.

2 BOARD MEMBER JONES: Oh, I got you.

3 CHAIRMAN EATON: As we get ready,
4 Mr. Fitzgerald, Item 5 has been pulled as we move to new
5 business, and Item 25, which was the permit for Fresno
6 County, I understand has also been pulled since we're on
7 new business; and Item 36, which was the AB 59 appeal of
8 Safety-Kleen, has now been pulled and substituted with a
9 new title.

10 So those bookkeeping matters out of the
11 way, Mr. Fitzgerald.

12 MR. FITZGERALD: Yes, Mr. Chairman. I
13 believe Item 1 was a consent item.

14 CHAIRMAN EATON: Right.

15 MR. FITZGERALD: So we're into Item 2,
16 which is the approval of the contract with Los Angeles
17 County for the Southern California Rubberized Asphalt
18 Concrete Technology Center. Mr. Nate Gauff of the staff
19 will give this. This is Byron Fitzgerald, Special Waste
20 Division.

21 MR. GAUFF: Good morning, Mr. Chairman and
22 Members of the Board. I'm Nate Gauff of the Special Waste
23 Division.

24 In 1996-'97, the Board approved \$500,000 to
25 go to L.A. County to run, or to establish at that time, a

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1 rubberized asphalt concrete technology center. The
2 assignments of the center at that time were to establish
3 outreach and training programs, provide consultation with
4 local governments, establish a web site, provide
5 information on materials on rubberized asphalt.

6 In 1997-'98 fiscal year, the Board
7 authorized a second \$500,000 allocation with the L.A.
8 center, with L.A. County, and the duties of the center at
9 that time changed slightly. They continued the outreach
10 program, but they also added an incentive program for
11 testing and quality assurance, quality control.

12 This item today is to approve the
13 augmentation of the second contract by \$200,000, to
14 continue the outreach program just in southern California,
15 now that the Board has established a northern California
16 center, and also to continue the quality assurance,
17 quality control program.

18 Any questions?

19 BOARD MEMBER JONES: Mr. Chairman, just
20 one.

21 CHAIRMAN EATON: Mr. Jones.

22 BOARD MEMBER JONES: On the task two under
23 the scope, did you -- is L.A. Tech Center, they think this
24 is the right way to go where it's units of three and
25 then -- as far as who's getting this reimbursement or is

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1 this ours?

2 MR. GAUFF: It's a combination of both.
3 What we're trying to do, obviously, is get some new
4 jurisdictions that haven't used the material. What
5 happened in the current contract was we didn't put as much
6 of a stipulation, and what we found is not a lot of
7 first-time users were using it. A lot of the
8 jurisdictions --

9 BOARD MEMBER JONES: Seventh, eighth and
10 ninth?

11 MR. GAUFF: There were a lot of the
12 jurisdictions weren't frequent users, so that was good.
13 We encouraged new users but also got some that had a few
14 projects in the past and got them to try it again.

15 BOARD MEMBER JONES: Okay.

16 CHAIRMAN EATON: Any other questions?

17 BOARD MEMBER JONES: Mr. Chairman.

18 CHAIRMAN EATON: Mr. Jones.

19 BOARD MEMBER JONES: I would like to move
20 adoption of Resolution Number 2000-18, consideration of
21 approval to augment and extend the contract with Los
22 Angeles County for the Southern California Rubberized
23 Asphalt Concrete Technology Center.

24 BOARD MEMBER MOULTON-PATTERSON: Second.

25 CHAIRMAN EATON: All right.

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1 Mr. Jones moves and Ms. Moulton-Patterson
2 seconds that we adopt Resolution Number 2000-18. I think
3 it's the first one this year; isn't it? I can't figure
4 out why "18", but I'll leave that.

5 Madam Secretary, please call the roll.

6 BOARD SECRETARY: Board Members Jones.

7 BOARD MEMBER JONES: Aye.

8 BOARD SECRETARY: Moulton-Patterson.

9 BOARD MEMBER MOULTON-PATTERSON: Aye.

10 BOARD SECRETARY: Pennington.

11 BOARD MEMBER PENNINGTON: Aye.

12 BOARD SECRETARY: Roberti.

13 BOARD MEMBER ROBERTI: Aye.

14 BOARD SECRETARY: Chairman Eaton.

15 CHAIRMAN EATON: Aye.

16 Thank you. Item 3, as mentioned earlier,
17 is a public hearing that will start at 9:30 tomorrow
18 morning.

19 Item Number 4.

20 MR. FITZGERALD: Item Number 4,

21 Mr. Chairman --

22 CHAIRMAN EATON: At lightning speed we're
23 moving, Mr. Fitzgerald.

24 MR. FITZGERALD: Absolutely. I would like
25 to slow it down just a little bit, though. Item 4 is

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1 approving to augment the waste stabilization and abatement
2 contract. Mr. Bob Fujii will be giving this, but I would
3 like to give special recognition to Mr. Fujii and Albert
4 Johnson who have been the two staff members working on
5 this particular project down at the Filbin tire site, the
6 work they've done has really been -- the recent rain
7 didn't even phase us, as you heard Mr. Chandler say
8 earlier, but the work that's been done there has been very
9 successful. And I think these two individuals deserve
10 special notice for the work that they've done.

11 So hoping that I haven't swollen his head
12 too far, I'll pass it over to Bob Fujii to cover this
13 item.

14 MR. FUJII: Boy, that's a tough act to
15 follow. Good morning. I'm Bob Fujii, Special Waste
16 Division. I'll be presenting Item Number 4, which is
17 consideration of approval to augment the 1997-'98 waste
18 tire stabilization and abatement contract. It's IWMC
19 7050, and it's with Norcal Engineering and Construction
20 Services.

21 Currently the Board is using Norcal to
22 remediate -- the Norcal contract to remediate and
23 stabilize waste tire sites in California. The contract
24 was originally advertised for an amount not to exceed \$2.5
25 million and is currently funded at \$2,197,000. The

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1 purpose of the item is to request the Board -- to request
2 an additional \$1.249 million to be added to the existing
3 waste tire stabilization contract in order to complete the
4 remediation of the unburned, oversized tires that is
5 currently going on at the Oxford-Filbin waste tire site in
6 Westley. These funds are needed because the existing
7 funding in the contract is either in process of being
8 spent or will be spent on waste tire sites that have been
9 previously approved by the Board.

10 The contract has been augmented twice
11 previously, in September of 1998 for \$690,371 and then
12 again in 1991 for \$635,600 which brings it to its current
13 funding level of \$2,971,000. I might refer you to
14 Attachment Number 1, and I'll go through an explanation of
15 where we're going with the augmentation.

16 Under current contract law, the Norcal
17 contract can be augmented up to 30 percent of the total
18 advertised amount of the contract, which is \$2.5 million,
19 which is, if you do the math, \$750,000. This means that
20 the total amount the contract can be amended is
21 \$3,250,000. Therefore, the maximum the contract can be
22 augmented is \$1.249 million, which is basically the \$3.25
23 million minus the funded amount, which is \$2,971,000.

24 This is the amount that we're basically
25 proposing to augment this contract by and it will bring

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1 the funding level of the Norcal contract up to its
2 maximum, which is just under \$3.25 million.

3 On August of last year, the Board approved
4 an allocation of up to \$3.6 million for the waste tire
5 stabilization and abatement program, and staff is
6 requesting that this augmentation be basically taken out

7 of that \$3.6 million, if you approve this request, and
8 then that will leave a balance of about \$2,351,000
9 available to fund the next contract that will be going
10 out, which probably will be advertised sometime in --
11 later this month or the latest as late as maybe February.

12 Finally, the options available to the
13 Board, staff is recommending that the Board approve
14 Resolution 2000-50, which will augment the Norcal contract
15 by \$1,249,000.

16 This concludes my presentation. Are there
17 any questions?

18 CHAIRMAN EATON: Any questions of
19 Mr. Fujii?

20 BOARD MEMBER PENNINGTON: Mr. Chairman.

21 CHAIRMAN EATON: Mr. Pennington.

22 BOARD MEMBER PENNINGTON: I'll move

23 adoption of Resolution 2000-50 to approve the augmentation
24 to the '97-'98 fiscal year waste tire stabilization and
25 abatement Contract Number IWMC 7050.

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1 CHAIRMAN EATON: I'll be happy to second
2 that.

3 Mr. Pennington moves and Mr. Eaton seconds
4 that we adopt Resolution 2000-50.

5 Without objection, we'll substitute the
6 previous roll call. Hearing no objection, so shall be
7 ordered.

8 BOARD MEMBER JONES: Mr. Chairman.

9 CHAIRMAN EATON: Mr. Jones.

10 BOARD MEMBER JONES: I want to say to Fitz
11 and all of his people, with the disaster that came along
12 and the way you guys handled, Mr. Chandler and everybody,
13 you did this Board and yourselves proud. You did a good
14 job.

15 CHAIRMAN EATON: One other thing, I hope

16 we're documenting everything we've done out there, not
17 only in terms of written but visual, because I think it
18 will become a prototype, not only for this state but for
19 others, in exporting our own technology as you well know,
20 and staff is important. So if we haven't --

21 MR. FITZGERALD: We are.

22 CHAIRMAN EATON: I think it's very
23 important because the rains that came have taken a lot of
24 abuse, but there's only been two agencies that have
25 actually really put up any money. One is a federal agency

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1 and one is a state agency, and it's our state agency. So
2 thank you.

3 BOARD MEMBER PENNINGTON: Mr. Chairman, I
4 would like to recognize Mr. Frith and our press operation.
5 I think we've gotten some very good coverage and we've
6 been treated very fairly. And I think we should be
7 thankful because we could have been painted into a corner
8 that made us look bad, and I think that Frith and his
9 office have done an excellent job for us.

10 CHAIRMAN EATON: All right.

11 Item Number 6. Members, no longer do we
12 have Ms. Trgovcich, but we'll be seeing more and more of
13 Mr. Orr, who now heads up the Division, and I know you'll
14 be keeping a track record of how fast we move through the
15 items and you're well-trained.

16 (Laughter)

17 CHAIRMAN EATON: But, of course, let than
18 that not be an influence on you.

19 (Laughter)

20 MR. ORR: Good morning, Mr. Chairman. I
21 would like to take the opportunity before I present the
22 items to introduce Jim La Tanner to present the items, to
23 give you a brief summary and update on the loan program
24 itself. For the record, I'm Bill Orr, the Acting Deputy
25 Director, Waste Prevention and Market Development.

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1 Since the inception of the Recycling Market
2 Development Revolving Loan Program, to date the Board has
3 approved and closed 81 loans totaling \$39,133,697.
4 Included in these figures are eight loans totaling
5 \$5,175,000 that were funded in this fiscal year. In
6 addition, the Board approved three loans totaling \$3
7 million that are anticipated to fund within the next 90
8 days.

9 Today, the Board will consider two loans in
10 the amount of \$905,000. In summary, this will bring the
11 total number of loans to 86, and after consideration of
12 the loans today, there remains \$14,033,000 in the
13 subaccount for future loans, including the projected
14 principal repayment, interest, and fee income through the
15 end of the fiscal year.

16 I have one other announcement, that the
17 Treasurer's Office has announced on January 20th that the
18 new surplus money investment fund interest rate will be
19 5.3 percent for the six-month period ending on June 30th,
20 year 2000, and that's a slight increase up from 5.1
21 percent. Pursuant to the Public Resources Code this
22 interest rate is set at the time of loan commitment.

23 Jim La Tanner, the supervisor of the loan
24 program, will present this morning's items. Loan officers
25 will be available to answer any questions.

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1 MR. LA TANNER: My name is Jim La Tanner.
2 I'm the supervisor of the Recycling Market Development
3 Revolving Loan Program.

4 Agenda Item 6 presents for the Board's
5 consideration and approval a loan request from Princess
6 Paper, Incorporated in the amount of \$700,000. The funds
7 will be used to purchase machinery and equipment to expand
8 their paper company. Previously the Board had approved a
9 loan to them in the amount of \$685,000. However, the
10 company opted not to accept the full amount and proceed
11 only with one instead of two projects so that was funded
12 in the decreased amount of \$275,000. Princess is now
13 coming back to the Board for the second project.

14 The paper that Princess will be using has
15 been verified to come from mills in California as opposed
16 to the prior project which was an out-of-state mill but
17 did accept paper from California. The company produces
18 such projects as facial tissue, toilet paper, table
19 napkins and kitchen towels, and they also sell their scrap
20 product back to the California mills.

21 Staff recommends approval of Resolution
22 2000-2 in the amount of \$700,000 to Princess Paper.

23 That concludes my presentation on this
24 item.

25 CHAIRMAN EATON: Any questions?

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1 BOARD MEMBER PENNINGTON: Mr. Chairman,
2 I'll move adoption of Resolution 2000-2 to approve a loan
3 in the amount of \$700,000 for Recycling Market Development
4 Revolving Loan Program for Princess Paper, Inc.

5 BOARD MEMBER JONES: Second.

6 BOARD MEMBER MOULTON-PATTERSON: Second.

7 CHAIRMAN EATON: I heard --

8 BOARD MEMBER JONES: I heard it over there.

9 CHAIRMAN EATON: All right.

10 Mr. Pennington moves and
11 Ms. Moulton-Patterson seconds that we adopt Resolution
12 2000-2.

13 Without objection, we'll substitute the
14 previous roll call. Hearing no objection so shall be
15 ordered.

16 One point I want to make with Princess
17 Paper, my understanding is -- and perhaps we can enlist
18 the Senator's help and he's not probably going to be
19 prepared for this.

20 This is one of those perfect examples where
21 I think Senator Presley, a former colleague of yours,
22 could be helpful with the Department of Corrections, which
23 I understand with regard to one of the examples I've used
24 of each prisoner used recycled toilet paper, which would
25 not be cruel and unusual punishment, I understand having

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1 checked with the constitutional lawyers, but in these
2 types of products is a perfect example of where we do
3 something that takes California mills and we get our
4 sister state agencies to actually purchase some of this
5 material. I think it's a nice dot connector or whatever,
6 and I know that you have a relationship with him.

7 BOARD MEMBER ROBERTI: It's a good idea.
8 It's a good idea.

9 CHAIRMAN EATON: I know it's one of the
10 things you pushed for for a long time.

11 BOARD MEMBER ROBERTI: It's a good idea.
12 He actually was very helpful for us in being able to use
13 recycled furniture.

14 CHAIRMAN EATON: Right. The PIA and some
15 of the other stuff, and you --

16 BOARD MEMBER ROBERTI: He's a good
17 environmentalist. Maybe. I'd be glad to --

18 CHAIRMAN EATON: If we could. I'm sorry.
19 Next item.

20 MR. LA TANNER: Agenda Item 7 presents to
21 the Board consideration of approval for a loan request
22 from Ramrock Leasing and Equipment Company, Inc. in the
23 amount of \$205,000. The company is going to use the loan
24 funds to purchase equipment to crush concrete and asphalt.
25 The end product will be to manufacture a

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1 three-quarter-inch Class II base aggregate of various
2 grades and sizes and produce sand as a byproduct. This
3 will result in an additional 80,000 tons per year being
4 diverted from California landfills.

5 The Loan Committee has approved the loan
6 and DIPLA and P and E have confirmed the project is
7 eligible.

8 Staff recommends adoption of Resolution
9 2000-17 to Ramrock Leasing and Equipment Company in the
10 amount of \$205,000.

11 CHAIRMAN EATON: Any questions?

12 BOARD MEMBER JONES: Mr. Chairman.

13 CHAIRMAN EATON: Mr. Jones.

14 BOARD MEMBER JONES: I want to move the
15 adoption. I want people to realize, or I hope they all
16 realize, Frank Allegre Trucking is all up and down this
17 state. That's somebody that was hauling this material to
18 landfills, determined that it was a good business
19 opportunity for them to get into the C&D business and
20 produce a product. You don't make those kinds of requests
21 unless you know you're going to make some money and
22 minimize your costs. This is a good business decision and
23 this is a pretty squared away operator in the
24 over-the-road transportation in California.

25 So with that, I'm going to move adoption of

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1 Resolution 2000-17.

2 BOARD MEMBER PENNINGTON: Second.

3 CHAIRMAN EATON: All right. Mr. Jones

4 moves and Mr. Pennington seconds we adopt Resolution

5 2000-17.

6 Without objection, we'll substitute the

7 previous roll call. Hearing no objection, so shall be

8 ordered.

9 Item Number 8.

10 MR. LA TANNER: Item Number 8 is for

11 consideration of lending to local governments and

12 modifications to the June 1999 Recycling Market

13 Development Revolving Loan Program public project

14 eligibility criteria.

15 There are two decisions the Board needs to

16 make today. On page 8-1, staff is recommending option

17 A-2, continue lending to local governments using the

18 standard credit evaluation process, but instead of using

19 loan documents, to fund the loans using a contract basis.

20 This (inaudible) would tie lending to a local government

21 entity and bring the project in encompassing all people

22 needed to complete that project. It focuses more on the

23 project and getting actual diversion as opposed to the

24 standard loan documents. Two other state agencies use

25 contracts and it has been very successful in proving that

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1 the project is more comprehensive and can be accomplished.

2 The second decision is if the Board does
3 continue to decide to lend to local government entities,
4 to modify the types of projects eligible under the loan
5 program. We are proposing a \$2 million maximum annual
6 amount to lend to local entities because of the increased
7 loan volume from private businesses and the depletion of
8 the loan fund.

9 We are also recommending that
10 deconstruction of a publicly owned structure be eliminated
11 from public projects, which was just added in June; and if
12 we lend to local governments for infrastructure projects,
13 the project would require at least four private recycling
14 businesses be sited adjacent to that infrastructure
15 project.

16 CHAIRMAN EATON: Per road?

17 MR. LA TANNER: Per road. Right.

18 Questions?

19 CHAIRMAN EATON: Okay. Questions?

20 BOARD MEMBER JONES: Mr. Chairman.

21 CHAIRMAN EATON: Mr. Jones.

22 BOARD MEMBER JONES: I understand what
23 you're trying to get at with the infrastructure and going
24 to four businesses, but I think maybe a better way or
25 another way to look at it would be to attach a tonnage

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1 projection because one big business that needs
2 infrastructure loans or a jurisdiction that is recycling
3 tens of thousands of tons versus four that are recycling
4 400 tons, we shouldn't have an arbitrary -- the fact that
5 four businesses exist in my mind doesn't talk to the issue
6 of diversion. So I think we ought to talk about some kind
7 of a tonnage projection because like I said, one business
8 may generate an awful lot of new diversion activity or new
9 use for recycled product.

10 How are we dealing with the collateral
11 issues? I think through the contract you're basically
12 saying that everybody in the chain has got to be involved
13 in this contract; right? This is not just an arbitrary
14 action for somebody to do it and then hope it gets repaid,
15 but are we tying any collateral of any kind or a pledge of
16 revenue to an enterprise fund or something to that
17 contract?

18 MR. LA TANNER: In the previous loan to a
19 local government entity, we did obtain a dedicated revenue
20 stream, and under the laws we get paid first before their
21 staff does. We were not able to tie in the private
22 business that's going to benefit from that street
23 expansion. So if we use a contract, we would tie in that
24 private landowner to the project and possibly could put in
25 penalties if they don't step up to the plate and do their

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1 part, which would ensure part of the loan be repaid back.

2 It's a new area for us to venture into. We
3 have a contract with an outside law firm that can help us
4 draft these contracts that is familiar with that process.

5 BOARD MEMBER JONES: Okay. So if a local
6 government comes in and needs money to facilitate the

7 building of the road to get to some new development area
8 and there's going to be a business there, that's basically
9 predicated on the fact that that business came to that
10 local government and said this is what I'm prepared to do,
11 this is as much money as I've got, the road needs to be
12 improved, whatever.

13 If the -- when we're talking about
14 structure in this so the business is involved, is it --
15 and I guess to make sure that they're held to the fire --
16 is there any potential that that business could be put on
17 the hook for the whole thing, for that whole repayment of
18 a government debt, if some condition were exasperated by
19 that government that precluded that business from properly
20 operating and we're going to come after them for the money
21 too? Have we thought that through?

22 I like the idea of including them, but I
23 think we need to think through how government can affect a
24 business's right to make a living and put conditions and
25 put them out of business. They get a road and the

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1 business is on the hook for a portion of the road. That
2 doesn't promote good trade and commerce. So I think we
3 need to --

4 MR. LA TANNER: That's the concept of
5 actually using a contract where all parties would be
6 financially on the hook in one form or another. It would
7 be a negotiated process as to how much each -- whether the
8 local government or how much is the private business going
9 to benefit from it, or the businesses that are going in
10 and sitting on that property would be a negotiated point
11 before we bring another loan to the Board for
12 consideration.

13 MS. CARTER: Additionally, Mr. Jones --

14 CHAIRMAN EATON: State your name for the
15 record, please.

16 MS. CARTER: Marie Carter, staff counsel.

17 One of the difficulties that we had with
18 lending to the City of Cloverdale was that there are some
19 constitutional debt limitation issues that we had to
20 overcome. So in working through that particular loan, it
21 was felt that the traditional lending documents that we
22 are currently using for private loans were not really
23 appropriate for these sorts of loans. So therefore, it
24 took us into the next realm of coming up with a contract
25 specifically designed to deal with the loan to the

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1 governmental entity.

2 As Mr. La Tanner said, these loans can be
3 crafted to suit whatever structure is coming before us for
4 your approval, and certainly you would have the ability to
5 impose additional requirements if you feel they were
6 necessary to make the business more committed to staying
7 at that location.

8 BOARD MEMBER PENNINGTON: Mr. Chairman.

9 CHAIRMAN EATON: Mr. Pennington.

10 BOARD MEMBER PENNINGTON: Mr. Chairman, I'm
11 opposed to this, and I'm opposed to it because I think
12 there's a substantial amount of money that's already out
13 there for local government. The Department of Housing has
14 a community development program which is both a loan and a
15 grant funded by federal money. There's the Department of
16 Commerce, Trade and Commerce, who has these kinds of loans
17 available. There's the redevelopment agencies that are
18 awash with cash for this kind of thing.

19 I think we should stick to what we do best
20 and that's encourage businesses and recycling businesses
21 in these areas.

22 CHAIRMAN EATON: I have three speakers,
23 Mr. Seth Hudson, I believe, from the City of San Leandro.
24 Mr. Hudson and Mr. John Davis and then Rory Bakke.

25 MR. HUDSON: Good morning. My name is

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1 Seth Hudson. I'm with the City of San Leandro. I'm the
2 Economic Development Specialist there and actually Rory
3 and I are working on a project together, so we might be
4 sharing back and forth here.

5 CHAIRMAN EATON: We're doing a lot of that
6 today.

7 MR. HUDSON: I would like to point out,
8 too, that the City of San Leandro is a member of the JTR
9 project area. Basically the Economic Development Division
10 supports the staff recommendation B-2, to continue to lend
11 to local government entities. We also were discussing
12 this morning what Mr. Jones brought up about looking at
13 tonnage in addition to number of businesses. To me that
14 just makes economic development sense. What happens if
15 you do get a business or two that are diverting a certain
16 amount of tonnage versus four businesses? So that makes
17 sense. That would be a recommendation.

18 Basically for San Leandro, we're a
19 built-out community. We are located between Oakland and
20 Hayward. We have a 20-acre parcel that's located directly
21 next door to our transfer center in San Leandro. However,
22 if developed, that piece of property, our infrastructure
23 is not capable of handling any additional truckload. So
24 for us we look to this loan as an assistance to locate
25 recycling business on that 20-acre -- Rory will speak a

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1 little bit more on that possibly -- to facilitate
2 development and to encourage some sort of recycling center
3 there.

4 The City does have a redevelopment agency,
5 like many cities. We have a redevelopment area. However,
6 it was just formed. It's going to take five years to get
7 the funding in place to even start paying for some of the
8 infrastructure. So the City will be looking possibly to
9 this loan to jump-start the project of which then maybe we
10 can use tax increments to pay that back, kind of a sharing
11 situation. That's about it.

12 Thanks.

13 CHAIRMAN EATON: Thank you. Any questions
14 of Mr. Hudson? Does Mr. Bakke want to go or -- Mr. Bakke,
15 you want to go next? I knew it.

16 MS. BAKKE: Good afternoon, Mr. Chairman.

17 CHAIRMAN EATON: I knew the last name
18 though; right?

19 MS. BAKKE: You got the name right.

20 CHAIRMAN EATON: I think there was a
21 lawsuit many years ago.

22 MS. BAKKE: No relation.

23 CHAIRMAN EATON: I didn't think so.

24 (Laughter)

25 MS. BAKKE: I'm Rory Bakke representing

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1 Alameda County Waste Management Authority and Recycling
2 Board, and we are here today because we've been working
3 for the last couple of years to site an ecoindustrial park
4 made up exclusively of resource recovery-based businesses
5 in Alameda County, and we have identified a very rare
6 thing in such an urban area, which is this 20-plus acre
7 site that we've talked with you about, and we're trying to
8 move with all speed to try and get the property to be
9 available to us for tenants that we have been working with
10 for the last two and a half years that represent close to
11 200,000 tons of potential diversion.

12 We've been working closely with the JTR
13 project with your staff, including John Smith, and we want
14 to support the staff recommendation with the one caveat
15 supporting what Mr. Jones mentioned just a few minutes
16 ago, that rather than to focus on four businesses -- we
17 weren't sure what the magic was of number four -- but to
18 look at possibly keeping that more flexible, looking at
19 maybe a combination of the number of businesses and the
20 amount of diversion, something that would allow for
21 project-specific review.

22 We not only support the reason for that
23 criteria, but we promote it as an agency, which is to make
24 sure that this obviously be only used for resource
25 recovery-related business siting.

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1 I guess we're available at any time today
2 or in the future if you would like more of a presentation
3 on this really exciting project, but right now we would
4 ask you to please move with all swiftness, if you may, so
5 that we can identify this source of funds which is filling
6 a gap. We have looked at all sources of local and federal
7 and statewide funding for this purpose, and I can assure
8 you that there are not many sources out there that would
9 be applicable to this kind of project. So once again, we
10 look for your support.

11 Thank you.

12 CHAIRMAN EATON: Thank you. Any questions
13 of Ms. Bakke?

14 BOARD MEMBER JONES: Just one quick one
15 because I know the hour is getting late. You've got two
16 entities, though, City of San Leandro; right?

17 MS. BAKKE: Right.

18 BOARD MEMBER JONES: And the Waste
19 Management Authority.

20 MS. BAKKE: Correct.

21 BOARD MEMBER JONES: So who takes on the
22 repayment structure? You get six bucks a ton. I don't
23 know what you guys get, but do you see the contract as
24 working in that kind of thing so that we're sure we're
25 going to get those dollars back?

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1 MS. BAKKE: Yeah. In fact, I think we
2 prefer the contract that's being recommended by staff
3 because it gives us more flexibility on how to look at the
4 options. Both agencies are capable of repayment and so we
5 just have another option to look at as to who would incur
6 the debt.

7 BOARD MEMBER JONES: Thanks.

8 CHAIRMAN EATON: Okay. Mr. Davis.

9 MR. DAVIS: Mr. Chairman and Board Members,
10 I administer the Mojave RMDZ, and I want to thank staff
11 for circulating this to all of the zone administrators so
12 we can have some input. That's a pleasant occurrence for
13 us, and I would like to suggest that if you look at a
14 project and you look at the merits of the project and the
15 conditions of approval, any project may be subject to
16 street improvements, water, sewer, infrastructure
17 improvements in order to proceed. And that's really the
18 critical thing when I talk with potential loan applicants.

19 We try to find where the money best fits,
20 and in developing areas particularly or even in
21 redeveloping areas, you've got the need to do some
22 off-site improvements, infrastructure improvements.
23 Normally you would think those public agency and local
24 government's obligation, but in a development project,
25 they're not necessarily that clear cut.

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1 So don't -- I guess my comment is don't tie
2 our hands. The four businesses I think is really
3 unnecessary. If you've got one good business, they're
4 going to borrow the money anyway. You may be better
5 served by having the local agency borrow it because it's
6 really for these public infrastructure purposes, and the
7 contract makes good sense in that standpoint.

8 As far as the tonnage requirement, again,
9 please don't be overly restrictive with us. Use this as a
10 good borrowing practice. If it makes sense on the
11 conditions of approval of the project, let it go forward
12 in your best interest, and if that is to tie in the local
13 agency, let's do that. Otherwise, the borrower is going
14 to be borrowing money maybe for the same purposes.

15 I've got two projects that I can talk about
16 where this is important, and so we'd like to retain our
17 ability to make the project happen and that's really the
18 most important thing.

19 CHAIRMAN EATON: Thank you. Any questions
20 of Mr. Davis?

21 What is your pleasure?

22 MR. LA TANNER: If I could add one more --

23 CHAIRMAN EATON: Sure.

24 MR. LA TANNER: If I could add one more
25 comment. Responding to Member Pennington's concerns about

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1 the availability of funds from other entities, Trade and
2 Commerce Agency does have an infrastructure bank. They
3 did get funded with over \$428 million. They expect \$2
4 billion in loan requests for that. Primarily that money
5 is targeted for infrastructure projects in rural areas
6 that are -- they're not availability of funds to rebuild
7 infrastructure, streets, sewer lines, et cetera. It is
8 not a priority of the infrastructure bank nor have they
9 been interested in our discussions to set aside funds to
10 make available for recycling-type projects or
11 infrastructure projects.

12 Redevelopment agencies have also been
13 looked at along with our loan to Cloverdale, and
14 Cloverdale did not feel they could get redevelopment funds
15 because that would have to go before the voters, and in
16 the area where the recycling is occurring in Cloverdale,
17 the voters weren't going to approve it so they didn't move
18 toward that option because it's only going to benefit one
19 business which has a lot of diversion to it. So it was
20 the non-availability of redevelopment funds why City of
21 Cloverdale came toward us.

22 CHAIRMAN EATON: Okay. We're just looking
23 at the resolution.

24 MR. SMITH: John Smith, Manager of the
25 Recycling Business Assistance Branch.

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1 If you do look at setting a tonnage limit,
2 you should be sensitive to the rural areas that may not
3 generate that much material. So you might want to maybe
4 look at a combination of number of businesses and tonnage
5 to better address that.

6 MS. TOBIAS: Mr. Chair.

7 CHAIRMAN EATON: Ms. Tobias.

8 MS. TOBIAS: That kind of brought to mind
9 the possibility of using the word "significant" or some
10 other modifier instead of a tonnage, and I'd leave it up
11 to Mr. Jones's expertise, but given the difference in
12 jurisdictions, perhaps what you want to do is wordsmith on
13 a modifier like that instead of a tonnage or instead of a
14 number that make it fairly artificial.

15 BOARD MEMBER JONES: Mr. Chairman.

16 CHAIRMAN EATON: Mr. Jones.

17 BOARD MEMBER JONES: I know the frustration
18 that Mr. Pennington feels on some of this stuff because
19 when Cloverdale came forward, I wasn't sure that it was
20 even an appropriate loan. I was a little nervous about
21 parts of it. The one thing that -- I think the dollars
22 need to be available, but I would hate to see -- well, I
23 would like to see how this thing gets developed, the
24 contracts, things like that, to ensure that I don't want
25 to see an unfair burden on anybody, but I also don't want

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1 to see this program depleted quickly and there were other
2 mechanisms around. You know what I mean?

3 So I'm going to move adoption of Resolution
4 2000-3 to include maximum annual maximum amount of \$2
5 million and -- I didn't hear any discussion on the
6 deconstruction exclusion in our conversation, but I think
7 that I can -- it can stay in. I think we change
8 infrastructure funding to facilitate the expansion or
9 siting of recycling businesses that divert.

10 MS. TOBIAS: Perhaps a significant amount
11 for that jurisdiction or for that region.

12 BOARD MEMBER JONES: That's where I was
13 going.

14 MS. TOBIAS: Okay.

15 CHAIRMAN EATON: Can I make a suggestion
16 perhaps, Mr. Jones? Maybe what we do is we approve the
17 fact that we can do the contracting with the annual cap
18 and that we ask staff to come back with the criteria over
19 the next 30 days or something like that to kind of flush
20 out some of the ideas that were brought out in the public
21 testimony; in other words, the concept of being able to
22 move through a contract process coupled with a cap, and
23 then try and flush out some of the language, whether it be
24 "significant" or "tonnage" or give us some ability to look
25 at some of those things. But that wouldn't stop your

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1 process of moving through, I don't think. Is that
2 correct, staff? To get the ball rolling, we would just
3 have to come back and let the Board understand what the
4 criteria is.

5 I'm struggling with the criteria. I
6 understand the concept of being able to want to help local
7 jurisdictions with the loans and so on and so forth, just
8 the criteria, just to try to work that out, we may be just
9 a little too much of novices added if that -- you know
10 what I'm saying? That would give you some idea of the
11 concerns that you had. In other words, we would approve
12 everything except that they would have to come back with
13 some criteria for the modifier.

14 BOARD MEMBER JONES: I think I would prefer
15 that we not even take a vote on it personally. If we're
16 not going to -- if we're -- if we have to get more
17 information because -- I don't want to do half the pie and
18 not like the second half of the pie.

19 BOARD MEMBER ROBERTI: Mr. Chairman.

20 CHAIRMAN EATON: Senator Roberti.

21 BOARD MEMBER ROBERTI: This is sort of a
22 different matter. On page 4, the language regarding
23 deconstruction restricted, could somebody illuminate why
24 that happened?

25 MR. LA TANNER: In June '99 when Board

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1 staff was preparing the eligibility projects, at the last
2 minute deconstruction was added as an eligible project
3 because Kaufman and Broad had a project out at Mather
4 which the loan program was not involved in and it was
5 thought to be a goodwill gesture to just add that.

6 Staff, in considering how to do those types
7 of loans, would generally loan to the local government
8 entity owning the land. The purpose of the contract would
9 be to let the local government entity fund deconstruction
10 of the building, at which point we then have a collateral
11 issue. You now have land as collateral, but you paid for

12 deconstructing the entire building, so there may be a
13 collateral shortfall. Then the next step would be loan
14 repayment is dependent heavily upon local jurisdiction
15 being able to sell that parcel of land because you
16 wouldn't normally have a purchaser lined up, agreeing to
17 pay off our loan. You might have an escrow, but there's a
18 high risk in the loan not getting paid back if that piece
19 of land was not then sold after we paid for deconstruction
20 of the building.

21 CHAIRMAN EATON: Well, I don't see any rush
22 here for a motion. So with that, if we can just -- per
23 Mr. Jones's suggestion, try and bring it back next month
24 and we'll continue the item until next month. Without
25 objection, so shall be ordered.

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1 BOARD MEMBER PENNINGTON: Mr. Chairman, I'd
2 like that, too.

3 CHAIRMAN EATON: Mr. Pennington.

4 BOARD MEMBER PENNINGTON: Maybe I can get
5 together with staff.

6 CHAIRMAN EATON: Absolutely.
7 Absolutely.

8 BOARD MEMBER PENNINGTON: Maybe they can
9 convince me.

10 CHAIRMAN EATON: I think the hour of noon
11 having arrived and hearing a number of grumbling stomachs,
12 we'll take our lunch break. I would appreciate when we
13 get back at 1:45, what I would like to do is get through
14 today, including the hearings, through Item 36, if at all
15 possible. That's not many items. It looks like a lot,
16 but if not, if we kind of do it not knowing for certain
17 how long the hearings will go, but if we could do that and
18 try to be back by 1:45, that gives us almost an
19 hour-and-a-half lunch.

20 We stand adjourned until 1:45. Thank you.

21 (Lunch recess taken)

22 CHAIRMAN EATON: Welcome back. Before we
23 begin with our next agenda item, I'll ask if Members have
24 any ex parte communications they need to report over the
25 lunch hour.

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1 Mr. Pennington.

2 BOARD MEMBER PENNINGTON: Just Bob Houston
3 and Mr. Montoya.

4 CHAIRMAN EATON: Okay. Mr. Jones.

5 BOARD MEMBER JONES: Nope.

6 CHAIRMAN EATON: Ms. Moulton-Patterson.

7 BOARD MEMBER MOULTON-PATTERSON: From this
8 morning's break, Yvonne Hunter I said "hello" to.

9 CHAIRMAN EATON: Senator Roberti.

10 BOARD MEMBER ROBERTI: None for me. Thank
11 you.

12 CHAIRMAN EATON: Okay. And -- none for me,
13 thank you? Did he have dessert?

14 (Laughter)

15 CHAIRMAN EATON: I just said "hello" to
16 Mr. Bob Houston; Rick Best, meet-and-greet; and former
17 Senator Montoya as well. All right.

18 Moving right into the agenda, I believe
19 we're at Item Number 10.

20 BOARD MEMBER ROBERTI: Mr. Chairman.

21 CHAIRMAN EATON: I'm sorry. Senator
22 Roberti. I'm sorry. Yes.

23 BOARD MEMBER ROBERTI: That's all right.

24 On Item 10, my wife owns stock in a
25 company. I think I have to mention the company -- it's

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1 Exxon-Mobil -- that may be required to submit a
2 certification depending on the outcome of this item.
3 Ultimately this could lead to a financial impact on the
4 company either through their own compliance activities or
5 the Board's enforcement activities. The FPPC would
6 prohibit my participation if it were substantially likely
7 that there would be a material financial impact on the
8 company but not if there is only a mere possibility. At
9 the present time I do not have any details on what, if
10 any, financial impact would occur.

11 I might add that on other companies where
12 she has stock, we do have information there would be no
13 financial impact. I have no reason to believe that it
14 would be anything different with this stock. However, in
15 an abundance of caution, I will be abstaining from this
16 item.

17 The other RPPC items on today's agenda,
18 however, do not raise the possibility of a financial
19 impact on her stock, so I will be participating on those
20 items.

21 With that, have a wonderful time as I
22 depart you all.

23 MR. ORR: Thank you, Mr. Chairman and Board
24 Members. Item Number 10 will consider the certification
25 process for the 1997 compliance year for the Rigid Plastic

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1 Packaging Container Program, and Michelle Marlowe will
2 present the item.

3 MS. MARLOWE: Thank you. For the record
4 I'm Michelle Marlowe in the Plastics Technology Section of
5 the Waste Prevention and Market Development Division.

6 As you all know, Public Resources Code
7 directs that the Board conduct a survey every calendar
8 year to determine recycling rates for all Rigid Plastic
9 Packaging Containers and for PETE RPPC containers. The
10 law sets a minimum recycling level of 25 percent for all
11 RPPCs and 55 percent for PETE RPPCs.

12 If these recycling levels are not met, then
13 product manufacturers selling or offering for sale in
14 California products which are packaged in Rigid Plastic
15 Packaging Containers must demonstrate compliance through
16 the use of another method allowed by law. Product
17 manufacturers that are determined may be out of compliance
18 may be subject to fines and penalties of up to \$50,000 per
19 violation, not to exceed \$100,000 per calendar year.

20 The Board recently adopted the 1997
21 all-container recycling rate as a range between 20.4
22 percent and 23.5 percent, which precludes the use of the
23 all-container recycling rate as a compliance method. The
24 Board then directed staff to initiate a compliance
25 certification process for the 1997 calendar year targeting

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1 at least 750 to 1,000 product manufacturers. The Board
2 further directed staff to return here to the January
3 meeting with recommendations for conducting the 1997
4 certification.

5 We're offering up three options for the
6 Board today. The first option would be to direct staff to
7 begin the 1997 certification process, as we recommend
8 today; to direct staff to begin the 1997 certification
9 process with modifications that you all might direct us to
10 incorporate today; or to direct staff to delay the 1997
11 certification process, possibly to wait until the spring
12 when we know what the '98 and '99 recycling rates are.

13 Staff is recommending the first option,
14 that we proceed with the '97 process, but that we -- and
15 that we model it after the 1996 process that we're
16 almost -- that we've almost completed, with a few
17 modifications.

18 Board staff met with the interested parties
19 in November of 1999 to discuss what went well and what did
20 not go well with the 1996 process. We met again with
21 interested parties in December of 1999 to get feedback on
22 the upcoming 1997 process. Staff presented its
23 recommendations to the interested parties, and the
24 interested parties indicated their support once security
25 plans for receiving and storing data were outlined.

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1 We have a couple of recommendations that
2 we'd like to make, some changes to the overall process
3 that we used for the 1996 certification. We'd like to
4 incorporate improvements based on our experience, and we
5 would like to target specific industry groups that we feel
6 indicate a high usage of RPPCs that would not be exempt,
7 and we would like to concentrate within four specific
8 industry sectors, those being automotive parts and
9 accessories, hobbies and crafts, tools and other hardware,
10 and janitorial supplies. As I said, these industries
11 appear to use large numbers of RPPCs. And in addition,
12 because some of these sectors ended up in compliance
13 agreements or in enforcement proceedings, we -- staff
14 feels like it might be more fair to further target those
15 specific business sectors.

16 We would also like to include folks that
17 incorrectly reported not being covered or not being
18 regulated in the 1996 process and companies that could not
19 provide data because they were involved in mergers and
20 acquisitions, as well as those few remaining companies
21 that we could not determine compliance for. We would like
22 to throw them back into the pool of -- pool sample.

23 We would like to make a few changes to the
24 certification forms, specifically two changes. The first
25 change would be to include a request for the number of

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1 containers in each identified product category so that
2 staff can determine compliance without having to recontact
3 product manufacturers for the missing information. The
4 second change would be to clearly mark certain portions of
5 the forms as confidential and proprietary.

6 The certification forms were developed in
7 cooperation with manufacture and trade association
8 representatives, and as we talked about these changes, the
9 only expressed concern had to do with confidentiality of
10 proprietary information and we have come up with some
11 mechanisms to assure confidentiality.

12 We have acquired stand-alone computers for
13 the database that would be password protected. We would
14 limit staff access to the database and the hard copy
15 files. Computers would automatically shut down when
16 there's no keyboard action for 30 seconds. We've already
17 obtained locking file cabinets which have been bolted to
18 the wall and the floor in a secured office, and we have
19 secured a fax machine that would be for the sole use of
20 receiving RPPC data during the 1997 certification period.
21 We've developed sign-in and sign-out procedures, and only
22 preauthorized employees would be allowed access to the
23 files.

24 We also would like to recommend that once
25 the universe of manufacturers for the certification cycle

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1 have been identified, that we limit the time for response
2 this year. As we're all aware, the 1996 process, if we
3 imagine that today is the conclusion of that, it's taken
4 18 months to complete the 1996 process. I think the
5 interested parties and staff all agree that we would like
6 to see a shorter process for the 1997 certification.

7 So we would be recommending that when we
8 mail the initial certification packages, the law allow 60
9 days for response with a one-time 30-day extension
10 possible under certain circumstances. In '96, we allowed
11 a lot of flexibility and it took a long time to get some
12 of that information. What we would like to do for '97 is
13 immediately upon the 60-or 90-day time clock, prepare an
14 item and come back to the Board with recommendations for
15 proceeding with either enforcement or compliance
16 agreements so that we'd like to drastically shorten the
17 process.

18 And I think that those are the highlights.
19 Does anyone have any questions for me?

20 CHAIRMAN EATON: Any questions of staff?

21 BOARD MEMBER MOULTON-PATTERSON: Do you
22 have a speaker?

23 CHAIRMAN EATON: I have one speaker slip,
24 Mr. Rick Best from Californians Against Waste.

25 Ms. Moulton-Patterson.

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1 BOARD MEMBER MOULTON-PATTERSON: Maybe
2 I'll make my comments, and then if you want to comment on
3 my comments, that will give you a chance.

4 First of all, I really endorse the staff's
5 recommendation to proceed with enforcement of the 1997
6 compliance. However, I understand you will be receiving
7 the recycling -- or will have all the recycling rates
8 ready in March; is that correct? For 1998 and '99. If
9 the 25-percent rate is met in '98 and '99, I'd like the
10 Board to reconsider continuing the 1997 enforcement as the
11 industry would clearly show it's been making progress, the
12 progress that we want on the Board. If the 25-percent
13 recycling rate isn't met for '98 and '99, we might
14 consider enforcing all three of these years together.

15 I don't want in any way my comments to be
16 construed that I want to lessen the effect of this law. I
17 just think it would make sense to wait until we get those
18 numbers. Does staff have comments or my colleagues have
19 comments on that? I think that it would help get it
20 going. '97 seems like three years ago.

21 MR. NUFFER: John Nuffer with the Waste
22 Prevention and Market Development Division. I think it
23 would help us if the rates were -- if '98 and '99 were
24 below 25, it would make things more efficient if we could
25 consolidate the three calendar years, the three compliance

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1 years in one certification. It would simplify the work we
2 had to do dramatically because we have to prepare and send
3 out forms and letters for '97 and then we have to do the
4 same thing for '98 and '99. I think it would -- by
5 consolidating we could save some time.

6 BOARD MEMBER MOULTON-PATTERSON: So in your
7 opinion we wouldn't be lessening the effect of the law by
8 waiting; is that right? Not wait, but -- do '97 now but
9 wait and see what the March numbers come in like and then
10 we could --

11 MR. NUFFER: I think the way we plan to
12 proceed is to keep working on the 1997 certification and
13 develop the mailing list and modify the forms and get
14 ready to do it, and that will take us into March.

15 BOARD MEMBER MOULTON-PATTERSON: Anyway.

16 MR. NUFFER: We wouldn't be able to anyway.
17 And we plan to have the recycling rates for '98 and '99
18 completed in early March, so we'll know when by the time
19 we send out those '97 forms what the rates are for '98 and
20 '99.

21 BOARD MEMBER MOULTON-PATTERSON: Okay.

22 Thank you.

23 BOARD MEMBER JONES: Mr. Chairman.

24 CHAIRMAN EATON: Mr. Jones.

25 BOARD MEMBER JONES: So as I understand,

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1 you could amend -- not amend, you could augment the
2 effort. We go forward with the '97. If the '98 and '99
3 rate are down, you could just kind of augment your effort
4 to include those as well.

5 MR. NUFFER: Sure.

6 BOARD MEMBER JONES: Is that what you're
7 saying? Okay. Because I think it's critical. I like the
8 idea of us getting caught up as quickly as possible, but I
9 think that it's important as well to understand that this
10 '97 rate, we've spent a bunch of money to get numbers to
11 start the thing, and we just had a new law pass that the
12 Bottle Bill has just gotten a lot bigger. And what that's
13 going to mean is we're going to collect a lot more plastic
14 at buy-back centers, MRFs, recycling facilities. And if
15 we don't have markets for that plastic, then this rate is
16 going nowhere but down.

17 So I don't want to do anything that
18 minimizes the message that there is an obligation to start
19 getting products made with recycled content plastic in --
20 I think out of respect to an industry that pushed the
21 expansion of the Bottle Bill, the people that put the
22 infrastructure in place, the legislature that passed it
23 and the Governor that signed it. We're going to have a
24 lot more containers in our stream to deal with, and I
25 think -- you know, I look at this staff recommendation and

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1 I don't have any problem with one. I like the idea
2 that -- I think when we did the last one, I said when you
3 identify Permatex but you don't identify the other five
4 businesses that they compete with, we're doing a
5 disservice to everybody.

6 So I like the idea that we're looking at
7 industry-specific categories so we can include a bigger
8 universe, but I would say under your "G" that says
9 compliance agreements and enforcement actions, it -- I
10 think the words that are missing out of that are the fact
11 that there are penalty hearings that need to be added to
12 that because while we went into compliance mode this first
13 time, it was to get people to understand that we've got to
14 walk through this process, but I think by precluding it or
15 not having it there, I think it's -- I think by not having
16 those words there is it voluminous, and I'm not prepared
17 to support something that doesn't show that, that penalty
18 hearings in that option. And while enforcement action may
19 be penalty hearings, probably is penalty hearings, my
20 vocabulary isn't as good as everybody else's. I need to
21 have it drawn out for me. That would be my -- that would
22 be my addition to that.

23 CHAIRMAN EATON: Ms. Moulton-Patterson.

24 BOARD MEMBER MOULTON-PATTERSON: I totally
25 agree with you, Mr. Jones, and I appreciate your

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1 experience putting that into words for me, but I would
2 just like to see us kind of catch up.

3 BOARD MEMBER JONES: Oh, yeah. Get caught
4 up, and that's why it's important.

5 BOARD MEMBER MOULTON-PATTERSON: Thank
6 you.

7 BOARD MEMBER JONES: We have got to get
8 caught up.

9 CHAIRMAN EATON: Mr. Best.

10 MR. BEST: Thank you, Chairman and Board
11 Members. Rick Best with Californians Against Waste.

12 We had submitted a letter to the Board
13 Members that you should have received yesterday, and I
14 want to touch on a couple of things. Let me just, I
15 guess, go first specifically to the comments that were
16 made by Ms. Moulton-Patterson.

17 We certainly appreciate the concern in
18 terms of wanting the Board to get caught up, but the fact
19 is right now here we are in January and the rate was
20 calculated in September, so it has been four months
21 already that we've been proceeding with the 1997 process.
22 So we would like to see that the 1997 enforcement be
23 undertaken as soon as possible. If it takes a month to
24 put the mailing together, then it takes a month. If it
25 takes two months, I can't understand why it would take

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1 that long to put that together. I think in the '96
2 process we were able to put that out fairly quickly, so we
3 would urge that the '97 process be initiated as soon as
4 possible.

5 If it turns out that it happens that the
6 Board can't get the mailing out and the '97 and '98 and
7 '99 determination is done -- and it makes sense to mail
8 all three at the same time -- then sure. I would say we
9 recommend that, but I think that the Board needs to
10 proceed with the '97 process as soon as possible. I don't
11 think there's -- you know, I guess the staff can respond.
12 I think the only savings is in terms of having to do two
13 mail-outs. There's still going to be the process of
14 processing the certification forms when they come back in,
15 whether you do one or you do three. The only benefit I
16 see of doing them both at the same time is simply the
17 mailing cost. So we would urge that the Board proceed
18 with '97 in an expeditious manner as much as possible.

19 The two issues that I wanted to raise were
20 one, in terms of the Board's coverage of the law in terms
21 of who it's targeting, and we're very pleased to see the
22 Board staff have recommended a change in terms of rather
23 than pursuing a random selection process to pursue
24 industry sectors. I guess our concern -- and I don't know
25 what the thought process was that was undertaken by the

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1 Board in selecting those four -- is making sure that the
2 Board is getting broad coverage of those companies that
3 use RPPCs and is not simply targeting four industries and
4 not targeting industries known to use a lot of RPPCs.

5 We think it's the Board's responsibility to
6 target all companies that use RPPCs. We understand in the
7 random selection process used last year a lot of companies
8 that didn't use RPPCs that were food product manufacturers
9 that were not covered under the law or exempted under the
10 law, it's not appropriate to be sending to all of those,
11 but the Board should be expected to be sending to all
12 those industries where it's expected that they are using
13 RPPCs and are regulated under the law.

14 We would urge that -- we would just simply
15 ask to make sure that when the Board is selecting those
16 targets, that it's not simply targeting specific
17 industries and not others, that it's targeting using all
18 those that are using RPPCs and would be regulated by the
19 law. That's issue number one.

20 The second issue, and that's the issue that
21 Mr. Jones referred to, is that we're very concerned about
22 proceeding down a path that doesn't ultimately lead to
23 enforcement of the law and specifically having what's
24 specified in the law of having an enforcement process
25 undertaken for those that have not complied with the law.

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1 What we've seen in 1996 was a process that
2 took about 18 months. I understand we're working out the
3 bugs and I think this time in '97 it can be done a lot
4 faster, but at the end of the process we ended up with
5 eight companies that were not in compliance of the law.
6 Seven of those were basically forgiven in terms of they
7 were issued compliance agreements in which no penalties
8 were assessed.

9 Admittedly there's one company that's
10 coming before the Board this afternoon, Loctite, which is
11 going to be considered for penalties. And I think that's
12 appropriate, but I think those other seven companies that
13 had failed to comply with the law, there should have been
14 enforcement action taken against those companies. So we
15 would urge in the second round of the Board going through
16 this process here in 1997 that the Board make the
17 enforcement process that's specified in the law, it's very
18 clearly stated that these container manufacturers are
19 required to comply with the law and that they're subject
20 to penalties by the Board, that that enforcement process
21 be undertaken as part of the '97 certification process.

22 Those are the two things that we think
23 ought to be addressed and clarified and made sure that the
24 Board is going to undertake the proper enforcement process
25 for the '97 rate.

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1 CHAIRMAN EATON: Any questions of Mr. Best?

2 BOARD MEMBER JONES: Mr. Chairman.

3 CHAIRMAN EATON: Mr. Jones.

4 BOARD MEMBER JONES: It's Chemlite, right,
5 that we're -- I think just for the record, it's Chemlite
6 and not Loctite.

7 MR. BEST: I'm sorry.

8 BOARD MEMBER JONES: Just so you know. And
9 then I think Rick and I have a difference on -- I think
10 he's happy that I included penalties because I always
11 think we need some kind of a hammer, but I think that one
12 important thing about this very first time around was that
13 -- the way I understood what we did was that if those
14 companies are able to include recycled content product in
15 their packaging for the year 2000, then they're going to
16 be in compliance, which means that we've got that many
17 more manufacturers using the product, which I think all of
18 this endorsed.

19 If they failed to do that, then they are
20 still liable for penalties for those three years. I think
21 that what we were trying to do -- and I know it's -- I
22 understand completely where you're coming from, Rick, that
23 you work that hard to have a law and it's got teeth, we've
24 got to make sure that the teeth are there and not
25 discounted.

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1 I'm hoping that we keep balancing because
2 the ultimate goal is to make sure that people are using
3 materials and then secondary use and a tertiary use in
4 some form or another, and if there are -- with a thousand
5 mailings more specific, I think it was important that we
6 had the word "penalty hearing" or something, whatever the
7 right language is, in this document so that those thousand
8 understood while a compliance order may be an option, it's
9 also an option that we don't offer a compliance order and
10 get them right here for a hearing to deal with the
11 penalties.

12 I think that's a natural progression of how
13 you move something forward. I know we -- I think we both
14 want to get to the same place, just maybe we have
15 different views. And that's okay.

16 MR. BEST: If I may respond. I think in
17 terms of your desire to see companies comply by using
18 recycled plastic, we certainly agree that is the goal, but
19 I think that the law is very clear in terms of the Board
20 has an enforcement responsibility under this law.

21 Those companies that failed to use recycled
22 plastic in 1997 and the Board undertake an enforcement
23 action, they're not going to want to go through that
24 again. They're obviously going to want to change their
25 process and use recycled plastic or one of the other

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1 options that are available to them in order to comply in
2 the year 2000.

3 Those companies that are subject to -- that
4 are not in compliance and are subject to potential
5 penalty, they're going to make that change if the Board
6 does undertake an enforcement action. So I think that you
7 achieve that in that manner. I think by proceeding with
8 an enforcement, though, you send a signal that you're not
9 going to get a four-year free ride, that you've got to
10 comply with the law that you're subject to.

11 CHAIRMAN EATON: I just have a couple of
12 questions. Mr. Best, you mentioned that there were
13 certain areas that you had concern with that may not be
14 included as part of the staff's recommendation. Do you
15 know what those might be?

16 They had talked about, I think, automotive
17 products, hobbies and crafts, and I can't remember. There
18 were two others. Are there others?

19 BOARD MEMBER JONES: Janitorial supplies.

20 CHAIRMAN EATON: Janitorial or whatever.
21 Others that come to your mind right now?

22 MR. BEST: I don't have anything
23 specifically. I understand the staff's process was
24 probably to go through the SIC codes. In the discussion
25 that we had at the interested parties, we didn't look at a

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1 list specifically. I'm just simply saying that I think
2 it's imperative that the Board, as it proceeds, that it's
3 looking at the broadest range of products that are likely
4 to be regulated by this law. So if it ends up being that
5 these are the four industries that are by far the majority
6 of them, then that may be the most appropriate.

7 I just think that the caution that was made
8 in 1996 was by doing a random selection, you didn't have a
9 fair enforcement law in terms of targeting all those
10 companies that are potentially regulated. The Board needs
11 to be sure that it's undertaking that when it does this in
12 the future.

13 CHAIRMAN EATON: As you well know, they
14 couldn't find a list. You and I found the list
15 originally, and then this matter before us. I have one
16 other question, and I do think -- and that's part of the
17 problem that took place. Please don't take this as a
18 comment of not trying to combine all those, but I need to
19 know for myself, just as a sitting Board Member, from
20 legal counsel. What are our requirements in order -- if
21 we do a combined process of '97-'98, let's say we have
22 '97. We have to certify that number; is that correct? As
23 a Board under the statute? And the reason why is that the
24 group who would oppose us, the plastics industry is a very
25 litigious organization, and if we don't cross our "Ts" and

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1 dot our "Is" that the number has to be certified by the
2 Board, if we send out a certification of '97, '98 and '99
3 and we haven't certified the '98 and '99 rate, does that
4 open us up to having that as an invalid process and what
5 we've gained is nothing but a lawsuit? I want to do it
6 because if we don't, I think that's where we've got to go.
7 What are the "Ts" we have to cross and the "Is" we have to
8 dot? Do we have to certify? Because every time I got
9 here and wanted to do something, I was told I can't. I
10 have to certify the rate. Is that a question that's a
11 proper one?

12 BOARD MEMBER JONES: Before they answer,
13 can I ask a question to clarify?

14 CHAIRMAN EATON: Sure.

15 BOARD MEMBER JONES: Was what you were
16 asking -- and I think maybe I'm missing something. We
17 have a certified rate for '97. What you were saying is
18 after the Board certified the '98 and '99 year
19 compliance -- no, it wasn't. That's what I'm trying to
20 find out before we ask them to respond -- that the Board
21 certify those years and whatever the determination is
22 based on that action, then combine this process after
23 we've certified? Is that -- okay.

24 CHAIRMAN EATON: When will we be ready for
25 certification?

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1 MR. ORR: The rate --

2 CHAIRMAN EATON: I just want to make sure
3 we've got our "Ts" crossed and our "Is" dotted. These
4 guys will sue us in a second that the process because
5 they -- you know.

6 MR. ORR: The rate for the 1998 and 1999
7 should be calculated in early March. We expect to take
8 that to an interested parties' meeting in mid-March, and
9 at that point we would be able to make the determination
10 about the rate.

11 CHAIRMAN EATON: What happens at an
12 interested party meeting for the benefit of the Board and
13 based on past practices? Are there challenges made to
14 that rate?

15 MR. NUFFER: The last rate for '97, what we
16 did was take our calculation of the rate, we gave them a
17 sheet which described step-by-step how we calculated the
18 rate and the data we used and where we got the data. So
19 if there was any point along the process where they wanted
20 to provide a challenge, they could have. And they knew
21 exactly how we calculated the rate so there were no
22 surprises.

23 CHAIRMAN EATON: Right. But -- and I just
24 want to get the question because I think it's a good one
25 if we combine it, but I also don't want to be vulnerable

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1 and I want to respect what Mr. Best said that we're going
2 to get caught into this whole idea where delay, delay then
3 we miss the '97 and then we're no better off. But if we
4 can work the '98 -- we can probably get '98. I'm not sure
5 about '99, but I would like legal counsel's opinion as to
6 what our legal requirements are.

7 MS. TOBIAS: Mr. Chair, I think Deborah is
8 going to try to answer your question, but I would be more
9 comfortable about going into closed session if you want to
10 talk about the possibilities of whether this is going to
11 get us sued or not. I'm a little bit concerned that we're
12 wandering close here to a discussion that would be better
13 held in closed session. So if we can answer the question
14 more generally in terms of buttressing how the staff has
15 come up with this recommendation or however it's been
16 brought up, I'm comfortable with that, but I also want to
17 recommend that if the Board has some concern about that,
18 then I would like to provide that information in closed
19 session.

20 CHAIRMAN EATON: Let me ask the question a
21 different way so I see if I can avoid your concern. What
22 are the steps that are necessary under the statute, public
23 statute, in order for us to go out and initiate
24 certification process? Does the Board have to take
25 certain steps certifying a number, not certifying a

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1 number?

2 MS. BORZELLERI: I think before the Board
3 can actually do any kind of an actual certification
4 process, the Board needs to adopt the all-container rate
5 and the PETE rates, and that's what's required in the
6 statute.

7 CHAIRMAN EATON: Okay.

8 MS. BORZELLERI: Does that answer?

9 CHAIRMAN EATON: And that will be
10 available --

11 MR. ORR: In order -- based on when we
12 would have the rate calculated, we would be bringing that
13 rate actually to the Board in April.

14 CHAIRMAN EATON: The '98 or the '99 or
15 both?

16 MR. ORR: Both.

17 CHAIRMAN EATON: Both. Okay. And the
18 earliest, the earliest that you would be able to bring the
19 '97 certification process which was already complete and
20 that step is already taken; is that correct? Or are we
21 doing that today?

22 MS. BORZELLERI: No. The 1997 rate was
23 adopted in September of '99.

24 CHAIRMAN EATON: All right. Okay. So how
25 long would it take you to put together the '97

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1 certification process in order to have those forms sent
2 out?

3 MR. ORR: We're estimating that we should
4 be able to send out the certifications in March.

5 CHAIRMAN EATON: Okay. So what I'm trying
6 to say is there's roughly a 30-day window. All -- would
7 all we have to do to do what Ms. Moulton-Patterson said,
8 assuming that your April date is correct, that that's
9 where we would be with those -- that adoption and
10 assume -- presuming we had enough votes, all we would have
11 to change on the certification form would be a section
12 that said '97, '98, '99?

13 MR. ORR: That's basically it. One
14 clarification.

15 CHAIRMAN EATON: Or stick another form in
16 that says '98, '99.

17 MR. ORR: Staff could be prepared to go --
18 to have forms that could go either direction. In the
19 event that in mid-March -- if we know -- if it looks like
20 the rate is above 25 percent, then we could just proceed
21 with the 1997 certification. If the rate is below, then
22 the next step would be coming back to the Board with that
23 rate in April, but we could be prepared to go in March
24 with '97 and then have the alternate forms available if
25 there is a consolidated certification that's initiated.

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1 BOARD MEMBER MOULTON-PATTERSON: I -- tell
2 me -- I'm trying to make this motion and achieve --

3 CHAIRMAN EATON: Took me a year and a half
4 to figure it out and I'm not even there yet, so --

5 BOARD MEMBER MOULTON-PATTERSON: If we
6 begin the certification process as staff presented in this
7 item, once we get the recycling rates for '98 and '99,
8 then consider if we want to consolidate certification
9 process for all three years to expedite our stringent
10 enforcement of this law, would that -- do you feel that
11 that would achieve what -- I know you can't read my mind,
12 but what I'm trying to achieve? I in no way want to not
13 strictly enforce this law with penalties, as Mr. Jones
14 said, but if there's a way, if it's a month or two and
15 we'll be able to -- I mean I want to proceed today with
16 what you're asking but with these modifications. Does
17 that make sense to you, Mr. Eaton? You've been here a lot
18 longer than I have.

19 CHAIRMAN EATON: Only by fire, I guess, in
20 this plastics issue. I think what I'm trying to get at
21 and what I heard Mr. Orr talk about is I'm trying to get
22 your part in it. That '97 process would be ready to go in
23 March. So we could bring that item back in March. It
24 would be the '97 item that's ready, and at that time,
25 Mr. Orr, you probably could give us a good indication

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1 whether '98 and '99 would meet your projection of April.

2 MR. ORR: That's correct.

3 CHAIRMAN EATON: If it were going to meet
4 the projection in April, we as a Board could then --
5 because we're continuing the '97. They're going to
6 proceed with getting '97 ready.

7 BOARD MEMBER MOULTON-PATTERSON: That's
8 what I want.

9 CHAIRMAN EATON: We could make that
10 judgment closer to time in March and if Mr. Orr said no,
11 we're having problems with the calculation or there's
12 challenges for '99, then we as a Board could make that
13 determination, okay. We're not going to go with the
14 combining process, but rather we would give the staff the
15 direction through the appropriate Board action if they
16 need to go ahead with the '97 alone, but at least we would
17 have more information than we have now in some 60 or 90
18 days out, which basically preserves your option and gives
19 us the opportunity to cross the "Ts" and dot the "Is".

20 BOARD MEMBER MOULTON-PATTERSON: Right.
21 Okay.

22 CHAIRMAN EATON: Because it's going to take
23 that long to get it ready.

24 BOARD MEMBER MOULTON-PATTERSON: That's
25 what I want. I want to start it today --

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1 CHAIRMAN EATON: Does that make sense?

2 BOARD MEMBER MOULTON-PATTERSON: Reserving.

3 Does that make sense?

4 CHAIRMAN EATON: Do you see any problem

5 with that?

6 BOARD MEMBER JONES: I don't think so. If

7 I understand, we're going to put this motion through to

8 get staff -- we have to start.

9 CHAIRMAN EATON: To start the 1997 process.

10 BOARD MEMBER JONES: We have to do the '97

11 certification process.

12 CHAIRMAN EATON: Irrespective of anything.

13 BOARD MEMBER JONES: So we're doing that

14 today.

15 CHAIRMAN EATON: Right.

16 BOARD MEMBER JONES: And then if these --

17 if we get the rate, we approve the rate, we certify, then

18 we can do '98 and '99, include it. I don't have a problem

19 with that.

20 BOARD MEMBER MOULTON-PATTERSON: Let me try

21 this and you can correct me if I'm wrong. I'd like to

22 move Resolution 2000-04 to direct the staff to begin the

23 1997 certification process with the modification that once

24 we get the recycling rates for 1998 and 1999, then we can

25 consider if we want to consolidate certification process

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1 for all three years to expedite our stringent enforcement
2 of this law. Do I have a second?

3 BOARD MEMBER JONES: You're going to get a
4 second. I would like to ask a question on the motion.

5 BOARD MEMBER MOULTON-PATTERSON: Okay.

6 BOARD MEMBER JONES: Under our
7 compliance --

8 CHAIRMAN EATON: Time's up. Sorry.

9 (Laughter)

10 BOARD MEMBER JONES: We talked about
11 including or specifying the penalty hearing --

12 BOARD MEMBER MOULTON-PATTERSON: Excuse me?

13 BOARD MEMBER JONES: Under G, which was one
14 of their --

15 BOARD MEMBER MOULTON-PATTERSON: Yeah.

16 Right.

17 BOARD MEMBER JONES: We just kind of made
18 it clear that there was that penalty hearing potential
19 instead of just enforcement, compliance agreement and
20 enforcement action, that we at least specified that that
21 could be a public hearing for enforcement. Would you
22 accept that?

23 BOARD MEMBER MOULTON-PATTERSON: And you
24 would like that? Yes.

25 CHAIRMAN EATON: So that will be part of

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1 the motion, and I'll second the motion. Before I call the
2 roll, we need not with that motion as framed direct the
3 staff not to send out '97 certification until such time in
4 March that we've had the Board meeting. I'm just saying
5 does that have to be or can we just separately and
6 apart -- we can adopt the motion.

7 MR. CHANDLER: You can just direct us.

8 CHAIRMAN EATON: -- send out the '97 ahead
9 of time before we have the information.

10 MR. CHANDLER: So, Bill, you understand the
11 directions?

12 CHAIRMAN EATON: Okay. All right.

13 Ms. Moulton-Patterson moves and Mr. Eaton seconds that we
14 adopt Resolution 2000-04 with the amendment by Mr. Jones
15 regarding the enforcement hearing.

16 Madam Secretary, please call the roll.

17 BOARD SECRETARY: Board Members Jones.

18 BOARD MEMBER JONES: Aye.

19 BOARD SECRETARY: Moulton-Patterson.

20 BOARD MEMBER MOULTON-PATTERSON: Aye.

21 BOARD SECRETARY: Pennington.

22 BOARD MEMBER PENNINGTON: Aye.

23 BOARD SECRETARY: Chairman Eaton.

24 CHAIRMAN EATON: Aye.

25 Thank you.

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1 BOARD MEMBER MOULTON-PATTERSON: Thank you
2 for your patience.

3 CHAIRMAN EATON: Moving quickly along,
4 Item Number 12.

5 MR. ORR: Item Number 12 is consideration
6 of approval of contract to Cascadia Consulting for the
7 denominator for the rigid plastic packaging all-recycling
8 rate, and John Nuffer will present the item.

9 MR. NUFFER: Thanks, Bill. Good afternoon,
10 Mr. Chairman and Board Members. As you know, the statute
11 requires that we annually calculate a recycling rate for
12 all rigid plastic containers. To do that, we need
13 recycling information and disposal information. We get

14 recycling information from the processors and claimers
15 that we're doing -- reclaimers that we're doing, that we
16 have done in the past. We get our disposal information
17 from waste characterization studies that we either use,
18 get data from them directly or from which we extrapolate.

19 When we calculated the '96 and '97
20 recycling rates, we extrapolated the waste disposal
21 numbers from the 1995 waste characterization study that
22 was conducted for the Board. The Board is just completing
23 a 1999 waste characterization study. This contract would
24 be to help us, give us guidance on how to extrapolate data
25 for the 1998 rate from that 1999 disposal data.

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1 We've worked with Cascadia for years.
2 They've done good work for us, and we would recommend that
3 you approve the award of this contract for \$50,000.

4 BOARD MEMBER JONES: Mr. Chairman.

5 CHAIRMAN EATON: Mr. Jones.

6 BOARD MEMBER JONES: I believe John Nuffer,
7 so I think I'll move adoption of Resolution 2000-37.

8 (Laughter)

9 BOARD MEMBER PENNINGTON: Second.

10 CHAIRMAN EATON: All right. Mr. Jones
11 moves and Mr. Pennington seconds that we adopt Resolution
12 2000-37. I'd like to substitute the previous roll call,
13 but I think Senator Roberti has the ability to vote on
14 this, I believe. So what I will do, Madam Secretary, if
15 you would please call the roll and then I'll hold the roll
16 open for the Senator if he desires to get on the roll.

17 BOARD SECRETARY: Board Members Jones.

18 BOARD MEMBER JONES: Aye.

19 BOARD SECRETARY: Moulton-Patterson.

20 BOARD MEMBER MOULTON-PATTERSON: Aye.

21 BOARD SECRETARY: Pennington.

22 BOARD MEMBER PENNINGTON: Aye.

23 BOARD SECRETARY: Roberti.

24 Chairman Eaton.

25 CHAIRMAN EATON: Aye.

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1 Okay. We'll hold Item Number 12 open.

2 Item Number 14.

3 MR. ORR: Item 14 will also be presented by
4 John Nuffer. It's the awarding of the contract for Shasta
5 Community College for a plastics conference.

6 MR. NUFFER: Actually, Steve is going to
7 present it.

8 MR. BOYD: Good afternoon, Chairman Eaton
9 and Board Members. For the record, I am Steve Boyd with
10 the Waste Prevention and Market Development Division. Are
11 you ready for another RPPC item?

12 BOARD MEMBER JONES: Absolutely.

13 MR. BOYD: At the Board meeting on October
14 20th, 1999, approval was given for a \$65,000 contract
15 concept for a Board-sponsored, statewide Rigid Plastic
16 Packaging Container conference. This item requests that
17 the Board consider and approve the award of a contract to
18 Shasta Community College to develop and manage the Rigid
19 Plastic Packaging Container conference.

20 The conference is planned for San Diego in
21 early May and targets product manufacturers, container
22 manufacturers, post-consumer resin producers, recyclers,
23 reprocessors, and other interested industry entities. The
24 purpose of this conference is to highlight the RPPC law
25 and the Board's current compliance efforts. It will also

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1 address technical barriers and opportunities for using
2 recycled resin and Rigid Plastic Packaging Containers.

3 Staff selected Shasta College as the
4 contractor for its resources that will leverage Board
5 funds for its knowledge of the plastic industry and its
6 relationship with plastic experts and plastic product
7 manufacturers. Shasta College has developed numerous
8 plastic industry contacts and databases that will assist
9 the Board in attracting qualified speakers and interested
10 participants which are critical to conducting a successful
11 conference.

12 Staff recommends approval of the contract
13 to Shasta College for facilitating the Rigid Plastic
14 Packaging Container conference and approval of Resolution
15 2000-14. We would be glad to answer any questions at this
16 time.

17 CHAIRMAN EATON: Any questions of Mr. Boyd?

18 BOARD MEMBER JONES: I've got one.

19 CHAIRMAN EATON: Mr. Jones.

20 BOARD MEMBER JONES: The -- when you say
21 that part of this or an important part of this is to talk
22 about the RPPC process and the law and this and that,
23 it -- I didn't get the sense when I read the item that
24 that was going to be -- I thought the focus was going to
25 be more on trying to generate interest and ideas in

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1 manufacturers and people using post-consumer content
2 plastic.

3 Now that you've brought it up, what's your
4 sense of division here as far as how much are we doing as
5 an advocacy role and how much are we doing as explaining
6 the law that if nothing else, the stakeholders will have a
7 pretty good idea what it involves?

8 MR. BOYD: We've actually been exploring
9 two tracks here and that's the direction we're heading.
10 One is with RPPC law and compliance. The other is with
11 the technical issues and examples that successful
12 companies that have been able to meet this. I think it's
13 pretty important that we be able to demonstrate those that
14 have been in compliance and how they've accomplished that
15 to the best of our ability. That's what we hope to do at
16 that conference.

17 BOARD MEMBER JONES: Okay. Then I agree
18 with it. I hate to see a rematch of every time we have
19 one of these RPPC hearings. Been there, done that.

20 CHAIRMAN EATON: We're doing it.

21 BOARD MEMBER PENNINGTON: Mr. Chairman.

22 CHAIRMAN EATON: Before you do,
23 Mr. Pennington, if I could just take a moment.

24 Senator, we had Item Number 12. Would you
25 care to cast a --

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1 BOARD MEMBER ROBERTI: Item Number 12.

2 CHAIRMAN EATON: Madam Secretary, will you
3 please call the roll.

4 BOARD SECRETARY: Board Member Roberti.

5 BOARD MEMBER ROBERTI: Aye.

6 CHAIRMAN EATON: Okay. Mr. Pennington.

7 BOARD MEMBER PENNINGTON: I'll move
8 adoption of Resolution 2000-14 to approve the award of a
9 contract to Shasta Community College for the Statewide
10 California Integrated Waste Management Board's Rigid
11 Plastic Packaging Container conference.

12 BOARD MEMBER JONES: Second.

13 CHAIRMAN EATON: Mr. Pennington moves and
14 Mr. Jones seconds that we adopt Resolution 2000-14.

15 Since Mr. Roberti is on the roll, we can
16 substitute the previous roll call. Without objection --
17 hearing no objection, so shall be ordered.

18 Next item.

19 MR. ORR: Item Number 16 is the
20 consideration of award of contract for the 2000
21 grasscycling outreach campaign to the Sacramento
22 Metropolitan Air Quality Management District, and Kevin
23 Taylor will present this item.

24 MR. TAYLOR: From plastic to grass here.
25 Good afternoon, Mr. Chairman and Board Members.

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1 CHAIRMAN EATON: If only that were true.

2 (Laughter)

3 MR. TAYLOR: Board Members, my name is
4 Kevin Taylor and I'm with the Waste Prevention Market
5 Development Division Organic Materials Management Program.
6 We're seeking your approval for the award of contract for
7 the year 2000 grasscycling outreach campaign to the
8 Sacramento Metropolitan Air Quality Management District.

9 At its October 1999 meeting, the Board
10 approved \$200,000 to extend the Board's effort to
11 implement local government partnerships to promote
12 grasscycling in the year 2000. This item provides \$20,000
13 to the Sacramento Metropolitan Air Quality Management
14 District to specifically promote grasscycling during its
15 "mow down pollution" campaign in Sacramento this spring.
16 This has been a successful ongoing program with over 2,000
17 old gas mowers traded in for new electric mulching mowers
18 in the last two years. Partners in this year's campaign
19 include the Sacramento Air Quality Management District,
20 Sacramento Municipal Utilities District, SMUD, and the
21 California Air Resources Board, as well as Yolo-Solano Air
22 Quality Management District.

23 The \$20,000 will be used to promote
24 grasscycling through print ads, radio and TV ads and, at
25 the mower events in April, participants would be required

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1 to visit a Board booth to receive grasscycling and other
2 waste management information.

3 Staff recommends that the Board approve
4 option one and adopt Resolution 2000-10 as is.

5 CHAIRMAN EATON: Any questions of staff?

6 I'll move adoption of Resolution 2000-10.
7 Second?

8 BOARD MEMBER PENNINGTON: Second.

9 CHAIRMAN EATON: All right. Mr. Eaton
10 moves and Mr. Pennington seconds that we adopt Resolution
11 2000-10.

12 Without objection, we'll substitute the
13 previous roll call. Hearing no objection, so shall be
14 ordered.

15 Item Number 18. 17 was on consent.

16 MR. ORR: Thank you, Mr. Chairman. This
17 item --

18 CHAIRMAN EATON: You're all alone now,
19 Mr. Orr. Can you handle that one?

20 MR. ORR: I think I've got it.

21 CHAIRMAN EATON: Okay.

22 MR. ORR: -- is consideration of approval
23 of contract to Humboldt County for a rural Recycling
24 Market Development Zone business incubator program. Steve
25 Boyd will present this item.

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1 MR. BOYD: Good afternoon, Mr. Chairman and
2 Board Members. For the record, I am Steve Boyd. This
3 time I'm with the Recycling Business Assistance Section.

4 (Laughter)

5 MR. BOYD: In several of the rural
6 recycling market development zones, business incubator
7 facilities have been or are currently being created to
8 promote business development. These projects reduce the
9 risk and expenses to start-up companies by providing
10 shared facilities, equipment and services.

11 At a meeting on October 20th, 1999, the
12 Board approved a \$60,000 contract concept for a pilot
13 rural RMDZ business incubator program. This item requests
14 that the Board consider and approve a contract with
15 Humboldt County for the development of a pilot rural
16 Recycling Market Development Zone business incubator
17 program, and the acronym for that is not much better.

18 This contract will determine the
19 feasibility for business incubator environments to
20 increase diversion of textiles, plastic, glass and
21 household items from California's rural waste stream.
22 Results from this project will be evaluated for
23 application to rural locations throughout the state.

24 Humboldt County was selected because of its
25 active RMDZ program, its existing business incubators,

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1 rural environment, dedicated staff and numerous project
2 collaborators. The contract with Humboldt County will
3 provide the greatest leveraging of the Board's funds and
4 resources.

5 Staff recommends approval of the contract
6 to Humboldt County for this pilot rural business incubator
7 project and approval of Resolution 2000-16. And I would
8 be glad to answer any questions at this time.

9 CHAIRMAN EATON: Any questions of Mr. Boyd?

10 BOARD MEMBER PENNINGTON: Mr. Chairman.

11 CHAIRMAN EATON: Mr. Pennington.

12 BOARD MEMBER PENNINGTON: In deference to
13 our former colleague, Senator Chesbro, I would like to
14 move adoption of Resolution 2000-16 to approve the award
15 of the contract to Humboldt County for the pilot rural
16 Recycling Market Development Zone business incubator
17 program.

18 BOARD MEMBER MOULTON-PATTERSON: Second.

19 CHAIRMAN EATON: All right. Mr. Pennington
20 moves and Ms. Moulton-Patterson seconds that we adopt
21 Resolution 2000-16.

22 Without objection, we'll substitute the
23 previous roll call. Hearing no objection, so shall be
24 ordered.

25 Final item I believe with regard to your

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1 division, Mr. Orr, Item Number 23, the other items in
2 between have been placed on consent and having been
3 already voted on.

4 MR. ORR: Thank you, Mr. Chairman. Item 23
5 is the consideration of approval to augment and extend an
6 existing agreement with the Building Industry Institute
7 for C&D training, and Steve Austrheim-Smith will present
8 this item.

9 MR. AUSTRHEIM-SMITH: Good afternoon,
10 Mr. Chairman and Members of the Board. My name is Steve
11 Austrheim-Smith.

12 Staff is proposing that the contract,
13 current contract with Building Industry Institute, be
14 amended for money and time. The amended contract will
15 change the end of the term of the contract from March
16 31st, 1999 and extend it to June 30th, 2001. It will also
17 augment the dollar amount by \$75,000 so that the amended
18 contract does not exceed a total of \$225,000.

19 By extending the contract completion to
20 June 30th, 2001, we would continue for an additional year
21 to introduce C&D debris recycling and reuse methodologies
22 as part of an ongoing training program for builders. We
23 would also continue for an additional year to collect data
24 for case studies.

25 We currently have four case studies that

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1 will be completed under the contract. We will get an
2 additional two. These case studies will be compiled from
3 California builders, from surveys of California builders
4 that have received the training and we will eventually
5 have a total of 12 case studies. We will also design and
6 present two more construction recycling and awareness
7 seminars to builders for a total of six seminars, and we
8 will continue for an additional year to develop builder
9 awareness materials for use in the BII trade journals.

10 Staff requests the Board adopt Resolution
11 2000-13 approving augmentation and extension of the
12 contract with BII.

13 CHAIRMAN EATON: Any questions?

14 BOARD MEMBER JONES: Mr. Chairman.

15 CHAIRMAN EATON: Mr. Jones.

16 BOARD MEMBER JONES: This has been a great
17 program, and I'd like to move adoption of Resolution
18 2000-13.

19 BOARD MEMBER PENNINGTON: Second.

20 CHAIRMAN EATON: All right. Mr. Jones
21 moves and Mr. Pennington seconds that we adopt Resolution
22 2000-13.

23 Without objection, we'll substitute the
24 previous roll call. Hearing no objection, so shall be
25 ordered.

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1 Congratulations, Mr. Orr, on making it
2 through the first time. All right. It's almost 3:00 and
3 as mentioned earlier we have a Chemlite hearing beginning
4 at 3:00. That hearing will start at 3:15. What I would
5 like to be able to do, Members, is get through what I
6 understand are Items -- 24, if you know, is Lionudakis.
7 That's not scheduled until 4:00. The next items are 26,
8 27 and 28. I am informed that those are pretty much
9 non-controversial, so if Ms. Nauman could come up and do
10 Items 26, 27 and 28.

11 After those are completed, we will then go
12 into closed session per legal staff's recommendation and
13 then upon coming out of closed session, we will begin the
14 Chemlite hearing.

15 Ms. Nauman. Thank you.

16 MS. NAUMAN: Good afternoon, Mr. Chairman
17 and Members. For the record, Julie Nauman, Deputy
18 Director, Permitting and Enforcement Division.

19 We have three items for you this afternoon
20 that are non-controversial permits. The first one is Item
21 26, consideration of a revised Solid Waste Facility Permit
22 for the Kings Waste and Recycling Authority Recovery
23 Facility in Kings County. This will be presented by Chris
24 Deidrick.

25 MR. DEIDRICK: Good morning, Mr. Chairman

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1 and Board Members. My name is Chris Deidrick with the
2 Permitting and Inspections Branch.

3 As already mentioned, this is Agenda Number
4 26, consideration of a revised Solid Waste Facility Permit
5 for Kings County Waste and Recycling Authority MRF, or
6 Materials Recovery Facility.

7 The proposed changes to this permit are as
8 follows: There's a change in the name of the facility;
9 there's also a change in the name of the owner and
10 operator; the permit has been modified, that is certain
11 monitoring requirements have been eliminated and some of
12 the self-monitoring reporting requirements that are sent
13 to the LEA have been adjusted, that is the submittal
14 frequency; the permit has also been modified in that some
15 conditions have been eliminated, and these are conditions
16 that are already found in Title 14 of the Public Resources
17 Code and also in the report of facility information.

18 Staff -- Board staff and the LEA have
19 determined that all findings are in compliance. In
20 conclusion, staff have reviewed the proposed permit and
21 supporting documentation and found them to be acceptable.

22 Staff recommends the Board adopt Resolution
23 2000-21, concurring in the issuance of Solid Waste
24 Facility Permit Number 16-AA-015.

25 Also present today is Raymond Cook who is

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1 the LEA of Kings County. Any questions?

2 CHAIRMAN EATON: Just one. What -- is
3 the -- it's Resolution 2000-21?

4 MR. DEIDRICK: Yes, sir.

5 CHAIRMAN EATON: Okay. I would just like
6 to make one correction on that, Members. I don't know why
7 it stuck out, but if it's Kings Waste and Recycling, isn't
8 it Kings County and not Kern County?

9 MR. DEIDRICK: That's my fault. I also
10 have Kern County. I often do that.

11 CHAIRMAN EATON: It's not you. I just want
12 to make sure for the record. Picky, picky, picky. I
13 know.

14 BOARD MEMBER PENNINGTON: Mr. Chairman.

15 MR. DEIDRICK: I see that.

16 CHAIRMAN EATON: Mr. Pennington.

17 BOARD MEMBER PENNINGTON: I'll move
18 adoption of Resolution 2000-21, with the appropriate
19 findings to indicate that the Board has found the proposed
20 permit to be consistent with the California Environmental
21 Quality Act, in conformance with the intent of the Kings
22 County Integrated Waste Management Plan, meets all local
23 and state permitting requirements, and is consistent with
24 state minimum standards; therefore, concur in the proposed
25 permit.

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1 CHAIRMAN EATON: All right. I'll second
2 the amended motion. Since this is a permit, a full roll
3 call is necessary.

4 Madam Secretary, please call the roll.

5 BOARD SECRETARY: Board Members Jones.

6 Moulton-Patterson.

7 BOARD MEMBER MOULTON-PATTERSON: Aye.

8 BOARD SECRETARY: Pennington.

9 BOARD MEMBER PENNINGTON: Aye.

10 BOARD SECRETARY: Roberti.

11 BOARD MEMBER ROBERTI: Aye.

12 BOARD SECRETARY: Chairman Eaton.

13 CHAIRMAN EATON: Aye.

14 If you'll just hold, Mr. Jones had to step
15 out for a moment. Hold the roll on that.

16 Item Number 27, Ms. Nauman.

17 MS. NAUMAN: Mr. Chairman, Item Number 27
18 is consideration of a revised Solid Waste Facility Permit
19 for the Devlin Road transfer station in Napa County and
20 will be presented by Mary Coyle.

21 MS. COYLE: Yes, Mr. Chairman and Members.
22 This is an existing facility located in the City of Napa
23 located near the City of American Canyon. It's owned and
24 operated by Napa-Vallejo Waste Management Authority. The
25 facility was originally designed to accept either rail car

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1 containers or truck trailers and is currently being
2 operated to haul waste via rail to the Roseville landfill
3 in the state of Washington.

4 The proposed permit would allow for the use
5 of transfer vehicles in transferring waste via rail and
6 transfer truck trailers and transferring via truck
7 trailers to Keller Canyon landfill in Contra Costa County.

8 All the required findings have been made,
9 and Board staff therefore is recommending that the Board
10 concur with the issuance of permit revision 28-AA-0027 and
11 adopt Resolution 2000-22.

12 We have representatives of the LEA and the
13 operator to answer any questions you may have.

14 CHAIRMAN EATON: Any questions?

15 BOARD MEMBER PENNINGTON: Mr. Chairman,
16 just so I --

17 CHAIRMAN EATON: Go ahead. I'm sorry.

18 BOARD MEMBER PENNINGTON: Just so I'm clear
19 on this, what they're doing is they're diverting some of
20 the waste that was going to Washington to the Keller
21 Canyon --

22 MS. COYLE: They're leaving the option
23 open to use the Washington landfill and they're going to
24 be diverting the waste to Keller Canyon for now.

25 BOARD MEMBER PENNINGTON: Thank you. I'll

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1 be happy to move adoption of --

2 CHAIRMAN EATON: Does that mean that their
3 revenues now will flow?

4 MS. COYLE: The Board will get revenues,
5 yes.

6 CHAIRMAN EATON: Just asking, you know.

7 (Laughter)

8 CHAIRMAN EATON: I think that's the
9 question you were really asking -- the hard fee collector.
10 Sorry, Mr. Pennington. Go ahead.

11 BOARD MEMBER PENNINGTON: In my party we
12 have to hide these things.

13 (Laughter)

14 CHAIRMAN EATON: That's why we have
15 sunshine laws.

16 (Laughter)

17 BOARD MEMBER PENNINGTON: I'll move
18 adoption of Resolution 2000-22 with the appropriate
19 findings to indicate that the Board has found the proposed
20 permit to be consistent with CEQA, in conformance with the
21 County Integrated Waste Management Plan, meets all local
22 and state permit requirements, and is consistent with
23 state minimum standards, and therefore concur in the
24 proposed permit.

25 CHAIRMAN EATON: All right. And I'll

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1 second the motion.

2 So Mr. Pennington moves and Mr. Eaton
3 seconds that we adopt Resolution 2000-22.

4 Madam Secretary, please call the roll.

5 BOARD SECRETARY: Board Members Jones.
6 Moulton-Patterson.

7 BOARD MEMBER MOULTON-PATTERSON: Aye.

8 BOARD SECRETARY: Pennington.

9 BOARD MEMBER PENNINGTON: Aye.

10 BOARD SECRETARY: Roberti.

11 BOARD MEMBER ROBERTI: Aye.

12 BOARD SECRETARY: Chairman Eaton.

13 CHAIRMAN EATON: Aye. If you can just hold
14 open the roll.

15 Item Number 28.

16 MS. NAUMAN: Item Number 28 is
17 consideration of the revised Solid Waste Facility Permit
18 for the Eastern Material Recovery Facility in Placer
19 County and this item will be presented by Christy Karl.

20 MS. KARL: Good afternoon, Chairman Eaton
21 and Members of the Board. The item before you considers a
22 revised Solid Waste Facility Permit for Eastern Regional
23 Transfer Station in Placer County which is owned and
24 operated by Placer County Department of Facilities
25 Services.

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1 The proposed permit allows for an increase
2 in the amount of waste processed daily from 475 tons to
3 600 tons, an increase of the vehicle traffic from 641 to
4 832. I was unable to provide a recommendation of this
5 item at time of print due to outstanding issues with CEQA
6 compliance, conformance with the Non-Disposal Facility
7 Element and compliance with state minimum standards.

8 Since that time I have inspected the
9 facility and found it in compliance with state minimum
10 standards, and staff has found this permit in compliance
11 with CEQA and the Non-Disposal Facility Element.
12 Therefore, staff recommends the Board concur in the
13 proposed revised Permit Number 31-AA-0625.

14 This concludes my presentation.

15 CHAIRMAN EATON: Ms. Moulton-Patterson.

16 BOARD MEMBER MOULTON-PATTERSON: I move
17 Resolution 2000-41 with the appropriate findings to
18 indicate that the Board has found the proposed permit to
19 be consistent with the California Environmental Quality
20 Act, in conformance with the intent of the County
21 Integrated Waste Management Plan, meeting all local and
22 state permit requirements, consistent with state minimum
23 standards, and therefore concurs in the proposed permit.

24 BOARD MEMBER PENNINGTON: Second.

25 CHAIRMAN EATON: All right.

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1 Ms. Moulton-Patterson moves and
2 Mr. Pennington seconds that we adopt Resolution 2000-41.
3 Madam Secretary, please call the roll.
4 BOARD SECRETARY: Board Members Jones.
5 Moulton-Patterson.
6 BOARD MEMBER MOULTON-PATTERSON: Aye.
7 BOARD SECRETARY: Pennington.
8 BOARD MEMBER PENNINGTON: Aye.
9 BOARD SECRETARY: Roberti.
10 BOARD MEMBER ROBERTI: Aye.
11 BOARD SECRETARY: Chairman Eaton.
12 CHAIRMAN EATON: Aye.
13 Okay. If you'll hold the roll open on
14 those three items. Thank you, Ms. Nauman.
15 Now we have the Chemlite hearing which will
16 start at 3:15. Members, we've been asked by the ALJ to
17 brief us on the proceeding, so if we could retreat to the
18 Board conference room. And then after we're done with the
19 Chemlite hearing, we will immediately proceed to take up
20 Item Number 24, which is Lionudakis. All right.
21 Madam Secretary, please call the roll on
22 Item 26.
23 BOARD SECRETARY: Board Member Jones.
24 BOARD MEMBER JONES: Aye.
25 CHAIRMAN EATON: Madam Secretary, please

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1 call the roll on Item Number 27.

2 BOARD SECRETARY: Board Member Jones.

3 BOARD MEMBER JONES: Aye.

4 CHAIRMAN EATON: And Item Number 28.

5 BOARD SECRETARY: Board Member Jones.

6 BOARD MEMBER JONES: Aye.

7 CHAIRMAN EATON: Thank you, and we'll see
8 you in a few minutes.

9 (Brief recess taken)

10 CHAIRMAN EATON: All right. We're back
11 for that portion of our agenda which is a public hearing
12 for Chemlite Industries, Inc., the public hearing for
13 Chemlite Industries regarding possible violations of the
14 RPPC statute and regulations.

15 This hearing will vary somewhat from the
16 Board's customary proceedings. I have been advised by
17 counsel that the statute involving the RPPC requires our
18 Board to proceed with an Administrative Law Judge, who is
19 present today, and the hearing must follow certain
20 provisions of the Administrative Procedures Act.

21 The Administrative Law Judge is here to
22 ensure that the proper evidence is presented and that
23 appropriate legal and procedural measures consistent with
24 the Administrative Procedures Act are taken during the
25 hearing. The primary concern addressed by this approach

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1 is that the parties' right to due process under the
2 Constitution are protected.

3 I will now turn the proceedings over to the
4 Administrative Law Judge who is here to conduct the
5 hearing, Judge Levy.

6 ALJ LEVY: Good afternoon. Can you hear me
7 okay now? This is the matter of the appeal of Chemlite
8 Industries, Incorporated. My name is Keith Levy. I'm the
9 Administrative Law Judge assigned to hear this case. I am
10 with the Office of Administrative Hearings, which is an
11 independent state office that conducts administrative
12 hearings for a number of state and local government
13 agencies on a contractual basis.

14 I am not going to be involved in the
15 decision making process in this case. I am just here to
16 conduct the hearing and rule on evidentiary matters and
17 procedural matters. The Board will make the decision in
18 this matter.

19 I'd like to get the appearances for the
20 parties starting with the complainant.

21 MS. BORZELLERI: Deborah Borzelleri for the
22 Waste Board.

23 ALJ LEVY: Can you spell your last name for
24 the court reporter?

25 MS. BORZELLERI: B-o-r-z-e-l-l-e-r-i.

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1 ALJ LEVY: Thank you. And the appellant.

2 MR. YATES: Bill Yates, Y-a-t-e-s, formerly
3 of Chemlite Industries, Incorporated.

4 ALJ LEVY: Thank you. I would now like to
5 have the Board introduce themselves starting on my left.

6 BOARD MEMBER PENNINGTON: I'm Daniel
7 Pennington, a public member appointed by the Governor.

8 BOARD MEMBER JONES: Steve Jones, I'm also
9 appointed by the Governor to the seat dedicated to the
10 industry.

11 CHAIRMAN EATON: I'm Dan Eaton, and I'm a
12 legislative appointee of the Speaker of the California
13 Assembly.

14 BOARD MEMBER ROBERTI: I'm David Roberti.
15 I am a public member appointed by the Senate Rules
16 Committee.

17 BOARD MEMBER MOULTON-PATTERSON: I'm Linda
18 Moulton-Patterson, a public member appointed by the
19 Governor.

20 ALJ LEVY: Thank you. Let me explain the
21 procedure for the hearing. I'll first entertain any
22 motions or stipulations, then each side will have the
23 opportunity to make a brief opening statement. An opening
24 statement is not under oath and it's not evidence that can
25 be considered. Traditionally, an opening statement is

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1 utilized to explain to the trier of fact just briefly what
2 your case will be about. It's not required that you make
3 an opening statement. You may waive opening statement if
4 you wish.

5 The complainant or the agency will proceed
6 first, followed by the appellant. After opening
7 statements, the agency will go first to put on their case,
8 followed by the appellant. The agency's exhibits will be
9 given a number and they'll first be marked for
10 identification and then they can be offered into evidence.
11 If there's any objections, I'll rule on objections to
12 documentary evidence. The -- after the agency puts on
13 their case -- oh, and the agency can of course call
14 witnesses. In fact, do we use this podium as the witness
15 stand?

16 CHAIRMAN EATON: Yes.

17 ALJ LEVY: Okay. So witnesses will testify
18 from the podium here, and the appellant of course will be
19 entitled to cross-examine witnesses called by the agency,
20 and after cross-examination the agency might have further
21 questions we call redirect, and then you're entitled to
22 further questions we call re-cross.

23 After the complainant has put on their
24 case, Mr. Yates, you'll have the opportunity to put on
25 your case. You can present documents. Your documents

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1 will be given a letter starting with capital "A", and you
2 first ask that they be marked for identification. When
3 you've laid a proper foundation for them, you can offer
4 them into evidence.

5 You of course are entitled to call
6 witnesses as well and you may testify on your own behalf,
7 and the agency of course will have the opportunity to
8 cross-examine any of your witnesses.

9 After all the evidence has been put in,
10 each side will have the opportunity to make a brief
11 closing argument starting with the agency and then with
12 the appellant. Then the -- after closing arguments, the
13 case will be submitted. The Board will meet in executive
14 session to deliberate and then they will come back in and
15 announce their decision. And I understand a formal
16 written decision will then be issued.

17 Any questions about procedure?

18 MR. YATES: I have none.

19 MS. BORZELLERI: None.

20 ALJ LEVY: Mr. Yates, since you represent
21 yourself, if there's anything during the hearing that you
22 don't understand, I will be glad to explain it to you.

23 MR. YATES: Thank you.

24 ALJ LEVY: All right. Any motions or
25 stipulations to be made?

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1 MS. BORZELLERI: Not at this point.

2 ALJ LEVY: All right. Then --

3 Ms. Borzelleri, how do you pronounce your name?

4 MS. BORZELLERI: "Borzelleri".

5 ALJ LEVY: "Borzelleri". You may make an
6 opening statement if you wish.

7 MS. BORZELLERI: With the permission of the
8 Board and the Court, I'll go to the podium so I can be
9 heard a little bit better.

10 Good afternoon, your Honor and Board
11 Members. We're here today to decide whether to assess
12 civil penalties against Chemlite Industries, Incorporated
13 for violation of the Rigid Plastic Packaging Container
14 statute and regulations. To tell you a little bit about
15 the statute and regulations, all product manufacturers who
16 sell or offer for sale in California products that are
17 stored in Rigid Plastic Packaging Containers are required
18 to comply with the RPPC statute and regulations using one
19 of several methods for compliance.

20 Generally, these options require either
21 recycling of plastic, less use of virgin resin, or use of
22 post-consumer resin. Product manufacturers are required
23 to certify and document compliance when requested to do so
24 by the Board as set out in Title 14, California Code of
25 Regulations Section 11346. That section also allows the

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1 Board to determine which product manufacturers must submit
2 certifications. The Board may use random selection,
3 container type, product type held by the container,
4 company size, or other factors in selecting product
5 manufacturers for certification.

6 The RPPC statute defines product
7 manufacturer as the producer or generator of a product
8 that is stored in a Rigid Plastic Packaging Container.
9 The RPPC regulations define --

10 MR. YATES: Excuse me. Would you please
11 repeat that, that definition?

12 MS. BORZELLERI: The statutory definition
13 defines product manufacturer as the producer or generator
14 of a product.

15 MR. YATES: Thank you.

16 MS. BORZELLERI: The regulations define
17 product manufacturer as the distributor of a product where
18 the name of the actual manufacturer of the product is not
19 listed on the product label. Public Resources Code
20 Section 42322 allows the Board to assess administrative
21 penalties of up to \$50,000 for any violation of the law up
22 to a maximum of \$100,000 per calendar year after notice
23 and hearing.

24 Chemlite Industries, Incorporated is
25 charged with one violation of the Rigid Plastic Packaging

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1 Container statute. That violation is failure to submit
2 the required certification documents to the Board. In
3 order to prove that violation, the State must demonstrate
4 that Chemlite Industries was a product manufacturer
5 selling products in California in 1996 and that the
6 company failed to submit the required certification
7 documentation.

8 At this hearing, the State will prove that
9 Chemlite Industries, Incorporated was a product
10 manufacturer doing business in California in 1996 and did
11 not submit the required documentation. In fact, the
12 evidence will show that Mr. Yates from Chemlite Industries
13 has offered no cooperation in complying with the
14 requirements at all.

15 Mr. Yates may argue that he should not be
16 subject to the law and yet, through his own admissions to
17 the Board staff, he has admitted to being a distributor of
18 products held in RPPCs with only the name of Chemlite
19 Industries on the label. Mr. Yates may also argue that he
20 was unfairly selected to submit certification
21 documentation to the Board. The State will prove that
22 Chemlite Industries was selected for certification through
23 a fair process.

24 This concludes my statements and turn it
25 over to the respondent.

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1 ALJ LEVY: Thank you. Appellant,
2 Mr. Yates, do you have an opening statement?

3 MR. YATES: I do.

4 Mr. Chairman and Members of the Board, it
5 is my contention and has been from day one having been
6 contacted by CIWMB back in 1998 relative to products sold
7 with our logo and label on a given RPPC -- it is our
8 contention that number one, we should not have been ever
9 looked upon as the manufacturer of the container, which in
10 fact is true. And as an industry standard within my
11 industry, which happens to be janitor supplies and private
12 label chemicals, it is actually a standard in our industry
13 as opposed to something that would be irregular that we,
14 in fact -- and I speak on behalf by the way of 180 member
15 companies of my trade association who are as adamantly
16 opposed to this as I am -- that there's certain things
17 about this classification relative to our industry that is
18 wrong. And therefore -- and by the way, when
19 Ms. Borzelleri made commentary about my name or my former
20 company's name being on a bottle, it could have been
21 Sears, Roebuck and Company. It could have been
22 Albertson's Supermarkets. We all know that they don't
23 make anything, nor did Chemlite Industries.

24 So our contention here is that Chemlite
25 never made what was in the bottle. Chemlite did, in fact,

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1 ask its private label filler to logo the bottle for them,
2 but the private label filler bought the bottle from
3 somebody else who manufactured it, and they in turn bought
4 the resin from the resin manufacturer and would have to go
5 four steps back to find out what kind of post-consumer or
6 secondary waste we had in the product to begin with. And
7 I or the 179 other members of my trade association were
8 not privy to that information.

9 So if I may, I have a couple of copies of
10 some letters. There's been an awful lot of commentary
11 about our good faith effort ever since we were contacted
12 by CIWMB, and I -- I am definitely opposed to that kind of
13 action on my part and I'll tell you the reason why. Back
14 in 1997 --

15 ALJ LEVY: Mr. Yates.

16 MR. YATES: Sir.

17 ALJ LEVY: I just want to repeat what I had
18 explained earlier. I don't want you to have to repeat
19 this again when you're sworn in if you're going to
20 testify.

21 MR. YATES: Okay.

22 ALJ LEVY: It sounds like you want to give
23 testimony now and there's no sense in doing it twice.

24 MR. YATES: All right. May I present
25 copies to the Members of the Board of letters I have

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1 written? May I do that now as part of my opening
2 statement?

3 ALJ LEVY: It's usually not done as part of
4 an opening statement. It's done when it's your turn to
5 put on your case.

6 MR. YATES: All right.

7 ALJ LEVY: Okay.

8 MR. YATES: At any rate, I understand where
9 the Board is coming from relative to the information they
10 have at hand. However, we are here obviously to refute
11 that and to make the Board more aware of what are the
12 standards in our industry, as well as the people who do in
13 fact make the RPPCs.

14 ALJ LEVY: Thank you.

15 MR. YATES: Thank you.

16 ALJ LEVY: Ms. Borzelleri, you may proceed
17 with your case and call your first witness.

18 MS. BORZELLERI: Thank you, your Honor. Am
19 I being picked up by the mike here?

20 ALJ LEVY: Yes.

21 MS. BORZELLERI: Thank you. The State
22 calls at its first witness John Nuffer.

23 ALJ LEVY: If would you please raise your
24 right hand, I will swear you in.

25

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1 JOHN NUFFER,
2 called as a witness by the California Integrated Waste
3 Management Board, having been duly sworn, was examined and
4 testified as follows:

5
6 ALJ LEVY: Okay. Are you comfortable
7 standing and testifying?

8 THE WITNESS: Sure.

9 ALJ LEVY: Okay. Go ahead.

10

11 DIRECT EXAMINATION

12 BY MS. BORZELLERI:

13 Q. Please state your name for the record.

14 A. My name is John Nuffer.

15 Q. And John, how are you employed?

16 A. I manage the Plastic Recycling Technology
17 Section here at the Waste -- in the Waste Prevention and
18 Market Development Division here at the Board, and my
19 responsibilities include managing the RPPC program and the
20 Board's market development efforts for all plastics.

21 Q. Can you tell me how -- tell me a bit about
22 the RPPC program. Just briefly summarize.

23 A. Statute requires that the Board annually
24 calculate a recycling rate for all Rigid Plastic Packaging
25 Containers. If that recycling rate is more than 25

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1 percent, or 25 percent or greater, all companies that use
2 RPPCs in California are deemed to be in compliance with
3 the law. If that recycling rate is less than 25 percent,
4 then companies must comply with the statute using one of
5 the other several methods specified in the statute; and if
6 that rate is less than 25 percent, the Board may request
7 certifications from companies certifying that they have
8 been in compliance with the law.

9 Q. What all-container rate was adopted in
10 1996?

11 A. The rate was 23.2 percent, which was below
12 the 25 percent.

13 Q. What did the Board do as a result?

14 A. The Board directed us to randomly select at
15 least 250, but no more than 500, companies for
16 certification and to mail out certifications to those
17 companies to determine whether they were in compliance
18 with the law in 1996.

19 Q. How did you get the names for the companies
20 that were on that list?

21 A. First, we went to the Standard Industrial
22 Classification code to identify industries that could
23 include companies that had a high probability of using
24 RPPCs in California. We identified 17 such industries,
25 but then we needed a way to get names and addresses and

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1 contacts for those companies. We identified 10 reference
2 sources and other sources for gathering those names of
3 companies in those 17 industries.

4 Once we had a list of companies, we used a
5 random number generator to help us select the 500 which we
6 ultimately certified.

7 Q. John, I'd like to have you look at these
8 two exhibits. We're on Exhibit 1 and 2. Is Exhibit 1
9 your list of Standard Industrial Codes and Exhibit 2 --

10 A. Yes, they are.

11 Q. And tell me what is List Number 2.

12 A. List Number 2 is the 1996 RPPC product
13 manufacturer certification list of samples that includes
14 10 categories of reference sources.

15 ALJ LEVY: Okay. The Standard Industrial
16 Classification codes is Exhibit 1 and the 1996 RPPC
17 product manufacturers certification list of samples is
18 Exhibit 2 for identification.

19 (Exhibits 1 and 2 marked for
20 identification)

21 Q. BY MS. BORZELLERI: John, was Chemlite
22 Industries, Incorporated one of the selected companies?

23 A. Yes, it was.

24 Q. And how was Chemlite chosen?

25 A. Chemlite -- Chemlite's glass cleaner was

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1 found through a survey of products used here at the Board
2 and by Compass Management.

3 Q. Is this the bottle that was located?

4 A. Yes. Yes, it is.

5 Q. Can you read the label?

6 A. It says the name of the product is Krystal
7 Clear Ready-to-Use Glass Cleaner. The name on the label
8 is Chemlite Industries.

9 Q. Do you see any other manufacturer's name on
10 the label?

11 A. No, I don't. Chemlite's name is on the
12 container on the front and the back.

13 Q. Okay.

14 MS. BORZELLERI: I'd like to submit this
15 bottle into evidence as Exhibit 3.

16 ALJ LEVY: Okay. The bottle will be
17 Exhibit 3 for identification.

18 (Exhibit 3 marked for identification)

19 MR. YATES: May I interject at this point?
20 May I cross-examine?

21 ALJ LEVY: No. You cross-examine at the
22 end of his testimony, and in terms of objecting to
23 exhibits, you do that at the time it's offered. It's just
24 marked now for identification. Okay?

25 MR. YATES: Thank you.

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1 ALJ LEVY: Thanks.

2 Q. BY MS. BORZELLERI: Okay. John, what
3 happened after the 500 companies were -- the 500 names
4 were selected to be certified?

5 A. We prepared certification forms and mailed
6 those certification forms certified mail to all of those
7 500 companies and then followed up when we did not receive
8 the forms back within 60 days, which was the statutory
9 limit for responding.

10 Q. Is this a copy of that certification
11 package? We're talking about Exhibit 4.

12 A. Yes, it is.

13 Q. And was a package like this mailed to
14 Chemlite Industries?

15 A. Yes, it was.

16 Q. Okay. Did you receive proof that Chemlite
17 Industries had received the package?

18 A. Yes, we did.

19 Q. And can you tell me what's on that card?

20 A. It's a domestic return receipt card from
21 the post office with -- indicating that Chemlite
22 Industries received our package signed by Bill Yates,
23 dated July 6th, 1998.

24 Q. Thank you.

25 MS. BORZELLERI: I would like to admit into

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1 evidence Exhibit 4 and Exhibit 5.

2 ALJ LEVY: This is a certification package
3 and postal proof that it was received now is Exhibit 5.
4 You had indicated -- did you offer this into evidence or
5 just marked for identification?

6 MS. BORZELLERI: Marked for identification.

7 ALJ LEVY: So 4 is the certification package
8 and 5 is the postal receipt.

9 (Exhibits 4 and 5 marked for
10 identification)

11 MS. BORZELLERI: Thank you.

12 Q. John, did you have any contact with a
13 representative of Chemlite or Mr. Yates?

14 A. No, I did not.

15 Q. Okay.

16 MS. BORZELLERI: I have no further
17 questions for John at this time.

18 ALJ LEVY: Thank you. Cross-examination,
19 Mr. Yates.

20 MR. YATES: Thank you.

21

22 CROSS-EXAMINATION

23 BY MR. YATES:

24 Q. Mr. Nuffer, you indicated just now that you
25 had no contact with me?

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1 A. Yes. Only my staff did.

2 Q. John, I disagree. You and I have talked on
3 the phone twice.

4 ALJ LEVY: Mr. Yates, you can't argue with
5 the witness. You can only ask questions.

6 MR. YATES: Okay.

7 ALJ LEVY: When you testify, you can give a
8 different -- you can testify differently if you wish, but
9 you can't argue. You have to accept the answer.

10 MR. YATES: Okay. Let me word it another
11 way.

12 Q. Mr. Nuffer, do you ever recall my having
13 called you specifically?

14 A. No, I do not.

15 Q. It's a long time ago. I understand, but do
16 you recall ever having had a phone call from southern
17 California from Chemlite Industries relative to your
18 plastic trash bag Public Resources Code Section 42290 and
19 my having mentioned the names Jerry Hart and Harold Brow?

20 A. No, I don't.

21 MR. YATES: Thank you.

22 ALJ LEVY: Is that all your questions?

23 MR. YATES: That's all.

24 ALJ LEVY: Any redirect?

25 MS. BORZELLERI: No.

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1 ALJ LEVY: All right. The witness is
2 excused. Thank you for your testimony.

3 You may call your next witness.

4 MS. BORZELLERI: The State calls Michelle
5 Marlowe.

6 ALJ LEVY: Good afternoon.

7 THE WITNESS: Good afternoon.

8

9 MICHELLE MARLOWE,
10 called as a witness by the California Integrated Waste
11 Management Board, having been duly sworn, was examined and
12 testified as follows:

13

14 ALJ LEVY: Now, will you state your full
15 name and spell it for the record.

16 THE WITNESS: My full name? Michelle
17 Angelique Marlowe, and the last name is M-a-r-l-o-w-e.

18 ALJ LEVY: You're probably going to have to
19 spell your middle name now.

20 THE WITNESS: That's Michelle with two Ls,
21 A-n-g-e-l-i-q-u-e.

22 ALJ LEVY: Thank you. You may proceed.

23 THE WITNESS: Thank you.

24

25 DIRECT EXAMINATION

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1 BY MS. BORZELLERI:

2 Q. Michelle, how are you employed?

3 A. I'm a Waste Management Specialist in the
4 Plastic Technology Section of the Waste Prevention and
5 Market Development Division here at the Board.

6 Q. And what is your involvement with the Rigid
7 Plastic Packaging Container Program?

8 A. Well, I was hired in July of 1998 to assist
9 with the first certified mailing having to do with the
10 1996 certification and the processing of that information
11 as we were receiving it, as well as answering lots of
12 questions from product manufacturers and container
13 manufacturers who were responding to the mailing.

14 Q. Thank you. Did you have any contact with
15 Mr. Yates, and if so, when?

16 A. Yes. My first contact with Mr. Yates was
17 on July 8th of 1998.

18 Q. And what did you discuss with Mr. Yates in
19 this call?

20 A. Mr. Yates called to complain that he had
21 received the certification and to adamantly state his case
22 about not being a product manufacturer. He did at that
23 time state to me that he had spoken with several other
24 Board Members, including Carol Brow and Bill Houston, and
25 to explain to them that he wasn't subject to the law and

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1 he felt we were harassing him. I informed him that Carol
2 Brow had retired and Bill Houston had passed away and that
3 I had never had a personal conversation with either one of
4 them regarding the RPPC program or Chemlite Industries
5 specifically.

6 The conversation lasted 10 or 15 minutes.
7 Mr. Yates was most upset and said that we didn't
8 understand the economics of his business in terms of using
9 post-consumer resin in containers and a direct quote that
10 I rather like is that, "The whole process was an exercise
11 in futility in math."

12 Q. And did you have any discussion with
13 Mr. Yates about whether he was subject to the law? Did
14 you have some questions that you had asked?

15 A. Well, yeah. Because I was fairly new to
16 the program, I had been given a list of questions to help
17 me work through the process, and our first question was,
18 "Were you doing business in 1996 in California," and his
19 response was "yes" and did he have products packaged in
20 RPPCs, and I went on to describe the legal definition of
21 an RPPC. We agreed that there were products with
22 Chemlite's name on the label in the marketplace in
23 California in 1996.

24 Q. And how did that conversation end?

25 A. He was very angry and said that he would go

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1 to higher levels within the organization and the
2 conversation ended.

3 Q. What was your next contact with Mr. Yates?

4 A. Well, it appeared that he did go to higher
5 levels within the organization because within a few weeks
6 I was asked by my Deputy Director to write a letter to
7 Mr. Yates clarifying the definition of "product
8 manufacturer".

9 Q. Is this a copy of the letter that you had
10 written?

11 A. Yes, it is.

12 Q. And what's the date on it?

13 A. August 21st, 1998.

14 Q. Would you describe the contents of the
15 letter and read the excerpt that defines "product
16 manufacturer"?

17 A. Yes. It's a letter telling him that we're
18 clarifying for him with regards to Chemlite's name on the
19 label of products, and specifically we quote from
20 regulation that identification of the product manufacturer
21 for the purpose of this program shall be determined by the
22 following hierarchy: One, when the name of an entity that
23 manufactured the product held by the container is stated
24 on the label, then that entity shall be considered the
25 product manufacturer; two, when the container label does

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1 not state the entity that manufactured the product held by
2 the container but the container label does state the
3 distributor of the container, then the distributor shall
4 be considered the product manufacturer; three, when the
5 container label does not state either the entity that
6 manufactured the product held by the container or the
7 distributor of the container but the container label
8 states the importer of the container, then the importer
9 shall be considered the product manufacturer.

10 And in closing, if Chemlite's name is the
11 only name appearing on the label, then Chemlite is
12 considered to be the product manufacturer for purposes of
13 compliance with the regulations. This means that Chemlite
14 must fill out and return the product manufacturer's
15 certification forms as instructed by the California
16 Integrated Waste Management Board in its letter to you of
17 July 3rd, 1998, and it's signed by Caren Trgovcich, my
18 Deputy Director at the time.

19 MS. BORZELLERI: I'd like to mark this for
20 evidence, Exhibit 6.

21 ALJ LEVY: All right. This is an August
22 21st, 1998 letter to Mr. Yates. This will be Exhibit 6.

23 (Exhibit 6 marked for identification)

24 Q. BY MS. BORZELLERI: Michelle, did you get a
25 response to the letter or did you -- or Price Waterhouse

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1 receive the required documentation, certification
2 documentation?

3 A. No certification documentation was received
4 in our offices or at Price Waterhouse Coopers.

5 Q. And could you tell us who Price Waterhouse
6 Coopers is?

7 A. It's a neutral third party accounting firm
8 that was hired under contract to receive this information
9 and store it and enter it into a database.

10 Q. How would you have known if the requested
11 certification documentation had been received?

12 A. In the early stages of the certification
13 process, we were in daily contact with staff at Price
14 Waterhouse assigned to the project, and our staff, we were
15 going over to their offices on a weekly basis initially to
16 look at the data. So in the first few months, we were in
17 daily and then weekly contact with those offices.

18 Q. And you did check regular -- did you check?

19 A. We checked regularly and they were
20 routinely giving us names of companies that were
21 responding so that we could check them off our list.

22 Q. Thank you. Did you have any further
23 contact with Mr. Yates or Chemlite Industries?

24 A. Yes, I did. In January of 1999, Board
25 staff sent out a second certified mailing to the companies

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1 that had not responded to the first request for
2 information.

3 Q. Did Mr. Yates contact you after that?

4 A. Yes. I thought we had a piece of evidence,
5 though. No? Okay.

6 Q. No.

7 A. Yes. He contacted me shortly after that
8 mailing went out. Again, he was very, very adamant about
9 the ridiculousness of the law and that we were singling
10 him out. We talked about again how he was selected. I
11 tried to explain the randomness of the selection process,
12 which he said he simply wouldn't accept and that if we
13 didn't ask all others in his business for the same
14 information, he'd raise hell all the way to the Governor's
15 office.

16 Q. Did you try to contact Chemlite or
17 Mr. Yates further?

18 A. No. I did not, not until September.

19 Q. What happened then?

20 A. As we were moving towards the enforcement
21 aspect of the certification process, we wrote a letter to
22 Chemlite Industries in September to make them aware that
23 we were proceeding with enforcement recommendations and
24 that we would be bringing an item in front of the Board.

25 Q. And how did you mail that letter?

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1 A. It went out by certified mail.

2 Q. Okay. And is this a copy of the letter
3 that was mailed?

4 A. Yes, it is.

5 Q. And the date on it?

6 A. September 1st, 1999.

7 Q. Okay. Did you receive evidence that
8 Mr. Yates had received this letter?

9 A. No. I received evidence that Mr. Yates had
10 refused this letter.

11 Q. Okay. Is this the package?

12 A. Yes. This is the package that was sent by
13 certified mail with notice -- notes from the post office
14 that they attempted delivery on September 3rd, September
15 9th and September 18th, on which day it was signed for but
16 then refused.

17 Q. Thank you.

18 MS. BORZELLERI: This is Exhibit 7 and 8.
19 I'd like to offer these for evidence to be marked, marked
20 for evidence.

21 ALJ LEVY: Okay. Exhibit 7 is the
22 September 1st, 1999 letter, and Exhibit 8 is the letter --
23 the envelope with documents sent to Mr. Yates that says
24 "unclaimed". That's Exhibit 8 for identification.

25 (Exhibits 7 and 8 marked for

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1 identification)

2 MS. BORZELLERI: You might note that it was
3 refused in handwriting on that.

4 MR. YATES: You said that was Exhibit 8.

5 MS. BORZELLERI: 8, yes. Perhaps on the
6 other side.

7 ALJ LEVY: No. That's right. It's written
8 on the front side "refused".

9 MS. BORZELLERI: Okay.

10 ALJ LEVY: And it says "9-18".

11 MS. BORZELLERI: All right. Thank you,
12 your Honor.

13 Q. Michelle, did you have any further contact
14 with Mr. Yates or Chemlite?

15 A. No, I did not.

16 Q. And to date has the Board or Price
17 Waterhouse Coopers received the required documentation
18 from Chemlite Industries, Incorporated?

19 A. No, we have not.

20 Q. Turning back to the general process, in
21 April of 1999, what did the Board direct staff to do
22 regarding enforcement action for the 1996 compliance year?

23 A. Well, at its April Board meeting the Board
24 directed staff to continue its efforts to obtain
25 information from those nonresponsive companies and to

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1 negotiate draft compliance agreements for those companies
2 who were not in compliance in 1996 but willing to enter
3 into agreements to attain future compliance.

4 Q. And did you believe that Chemlite
5 Industries would have been willing to enter into a
6 compliance agreement?

7 A. No.

8 Q. On what do you base that belief?

9 A. The several conversations that we had and
10 his adamant assertion that the law was ridiculous and
11 didn't pertain to him, as well as the fact that he refused
12 delivery of the letter that we sent notifying him about
13 enforcement actions.

14 Q. In October of 1999, what actions did the
15 Board take regarding enforcement action for the 1996
16 compliance year?

17 A. We adopted several -- not we. The Board
18 adopted several compliance agreements with companies that
19 agreed to cooperate into -- coming into compliance with
20 the requirements in the future, and then they also adopted
21 public hearing procedures and penalty criteria for the
22 RPPC program.

23 Q. Is this a copy of the penalty criteria that
24 was in the Board agenda item?

25 A. Yes, it is.

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1 Q. That was adopted?

2 A. Yes.

3 Q. Can you read into the record the major
4 headings off that for the criteria?

5 A. There are eight. The first is the
6 violator's good faith effort or lack of good faith effort
7 to comply; two, the violator's degree of compliance;
8 three, the violator's history of compliance; four, the
9 violator's efforts to compliance agreement; five, the
10 amount of resources expended to comply; six, the
11 violator's progress towards compliance; seven, the size of
12 the violator's operation as it relates to the ability to
13 develop environmental compliance programs and/or pay
14 penalties or fines; and eight, the violator's impact on
15 the market.

16 I'm sorry. There's one more, any other
17 unique circumstances that the Board determines are
18 relevant and should be considered.

19 MS. BORZELLERI: I would ask this exhibit
20 be marked as Exhibit 9.

21 ALJ LEVY: This is a two-page document that
22 says "penalty criteria". It's Exhibit 9 for
23 identification.

24 (Exhibit 9 marked for identification)

25 Q. BY MS. BORZELLERI: In November of 1999,

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1 what action did the Board take regarding enforcement
2 action for the 1996 compliance year?

3 A. They directed staff to schedule public
4 hearings for the purpose of assessing civil penalties
5 against several companies who had been nonresponsive or
6 were not willing to cooperate in coming into compliance
7 with the RPPC requirements.

8 Q. Was Chemlite Industries one of those
9 companies?

10 A. Yes, it was.

11 Q. Would you see if this was the notice that
12 was mailed to Chemlite or tell me what that is?

13 A. It's a notice of public hearing to consider
14 imposition of administrative civil penalties in the matter
15 of Chemlite Industries, giving the date and time and place
16 along with the regulations pertaining to the RPPC program,
17 Public Resources Code, and a sheet detailing the Board
18 hearing procedures.

19 Q. And is there in there a description of
20 noncompliance?

21 A. A description -- a general description of
22 noncompliance? Yes.

23 Q. Thank you. And how was this notice given
24 to Mr. Yates?

25 A. Well --

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1 Q. Or Chemlite Industries?

2 A. We decided we couldn't use certified mail.
3 That hadn't worked in September, so the decision was made
4 to personally serve him and we hired a process server, and
5 we have proof that he was served with that notice.

6 Q. Did that document give you proof?

7 A. This is the declaration of diligence that
8 we received from the process server, yes.

9 Q. Thank you.

10 MS. BORZELLERI: These are Exhibits 10 and
11 11. I'd like to mark those as evidence.

12 ALJ LEVY: The notice of public hearing
13 will be Exhibit 10 for identification, and the proof of
14 personal service will be Exhibit 11.

15 (Exhibits 10 and 11 marked for
16 identification)

17 MS. BORZELLERI: Thank you.

18 Q. In preparing for this hearing, what did you
19 discover about Chemlite Industries?

20 A. Well, we needed to do a little research to
21 get ready for the hearing and to apply those criteria that
22 I read into the record. We discovered through research
23 with Department of General Services that the company was
24 incorporated in 1997 and dissolved on September 20th of
25 1999.

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1 Q. Is this a copy of the documentation that
2 you received?

3 A. Yes.

4 MS. BORZELLERI: Exhibit 12. I'd like
5 this marked for evidence.

6 Q. BY MS. BORZELLERI: Did you contact any
7 other state agencies --

8 ALJ LEVY: Hold on just a second. I need
9 to indicate for the record this document -- what did you
10 call it? It says "statement of domestic stock
11 corporation". It's the proof of incorporation and when it
12 was dissolved.

13 MS. BORZELLERI: And dissolution, yes.

14 ALJ LEVY: So that will be Exhibit 12.

15 (Exhibit 12 marked for identification)

16 ALJ LEVY: Has Mr. Yates -- does he have
17 copies of all these?

18 MS. BORZELLERI: Yes, he does.

19 ALJ LEVY: You may proceed.

20 MS. BORZELLERI: Thank you.

21 Q. Did you contact any other state agencies to
22 get information?

23 A. Yes. That information was received from
24 the Secretary of State. We also talked with General
25 Services because it appeared that there must be a contract

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1 between the State and Chemlite. As you know, we -- the
2 way Chemlite got into the pool of surveys, we did a work
3 place survey and found these containers at each and every
4 Xerox machine within our buildings, so we knew that the
5 State had to be providing it.

6 So we found out through General Services
7 that Chemlite Industries had been certified as a small
8 business for the years 1995 through 1997 and again from
9 '97 through '99. We obtained Chemlite's applications for
10 those periods, which are signed by Mr. Yates,
11 demonstrating that the company was operating for that
12 period of time, selling chemical products in the state of
13 California. Also, the documentation that Mr. Yates filled
14 out showed that there were only two owners of stock in the
15 corporation, Bill Wolfe Yates and Helen Wolfe Yates.

16 Q. Is this a copy of that documentation that
17 you received?

18 A. Yes, it is.

19 Q. And could you turn to page 13-9?

20 A. I don't have that in this exhibit that you
21 gave me. Okay.

22 Q. And on that page, what does it show as the
23 owners, partners, directors and officers and the ownership
24 percentages?

25 A. Helen Wolfe Yates, CEO-treasurer with 51

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1 percent of the stock, and Bill Wolfe Yates, President with
2 49 percent of the stock.

3 Q. Okay. Thank you.

4 MS. BORZELLERI: I'd like to mark this in
5 evidence as Exhibit 13.

6 ALJ LEVY: Okay. This December 7th, 1999
7 letter and attachments is Exhibit 13.

8 (Exhibit 13 marked for identification)

9 ALJ LEVY: You may proceed.

10 Q. BY MS. BORZELLERI: Was any further
11 research done?

12 A. Yes. We also researched the Thomas
13 Register of American Manufacturers on the internet to find
14 out the relative size of Chemlite and discovered that
15 according to the Thomas Register of American
16 Manufacturers, Chemlite was a small company with fewer
17 than six employees and gross annual receipts of less than
18 \$5 million.

19 Q. Did you recommend a proposed penalty amount
20 for the Board to assess?

21 A. Yes, I did.

22 Q. What was the basis for your recommendation?

23 A. Well, I applied the adopted penalty
24 criteria to the situation and recommended the full penalty
25 of \$50,000. Would you like me to read through those?

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1 Q. If you would.

2 A. Okay. The first criteria, as you will
3 recall, is the violator's good faith effort or lack of
4 good faith effort to comply, and my response was that the
5 violator was unwilling to work with Board staff, unwilling
6 to discuss future compliance with the law, unwilling to
7 work with vendors that might be able to supply source
8 reduced containers or containers with post-consumer resin
9 and showed a general lack of good faith effort to comply.

10 The second criteria is the violator's
11 degree of compliance, and my response is that there's been
12 no attempt to comply, required certification forms were
13 not filed, and Chemlite's President asserted to Board
14 staff that the company had not used post-consumer resin or
15 source-reduced any RPPCs and that it didn't have any
16 intention of doing so.

17 Third, the violator's history of
18 compliance, my response was that this enforcement action
19 is the result for the first time of the aggregate RPPC
20 recycling rate being below 25 percent in 1996. All
21 companies, including Chemlite, were considered to be in
22 compliance in the previous years because the Board adopted
23 an aggregate recycling rate range for 1995 that met the
24 statutory minimum of 25 percent.

25 The fourth criteria is the violator's

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1 effort to implement a compliance agreement, and my
2 response was that the violator was unwilling to discuss
3 compliance agreements with the Board staff.

4 The fifth criteria was the violator's
5 progress towards compliance. My response was that Board
6 staff was told on the telephone that the company would
7 make no efforts to comply in the future.

8 Six, the size of the violator's operation,
9 my response here is that Chemlite is a small partnership
10 established in 1963. It employs fewer than six employees
11 and had reported sales in the range of \$1 to \$5 million in
12 1997 according to Dunn and Bradstreet.

13 Seven, the violator's impact on the market,
14 my response was that Chemlite Industries is a relatively
15 small company. However, the owner is President of a trade
16 association, the Southern California Sanitary Supplies
17 Association.

18 These facts combined indicate that
19 Chemlite's refusal to use post-consumer resin could have a
20 significant impact on the market if other companies
21 followed to choose Chemlite's examples -- example.

22 Any unique circumstances that the Board
23 determines are relevant, and I didn't have a response for
24 that.

25 Q. Okay. Thank you.

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1 MS. BORZELLERI: I have no further
2 questions for Michelle.

3 ALJ LEVY: Cross-examination, Mr. Yates.

4 MR. YATES: Yeah. I have one question.

5

6 CROSS-EXAMINATION

7 BY MR. YATES:

8 Q. The last part of your presentation when you
9 indicated that --

10 ALJ LEVY: Is your mike on?

11 MR. YATES: I beg your pardon?

12 ALJ LEVY: Do you have a microphone?

13 MR. YATES: Sorry, your Honor. Covered
14 over by the paper. Can you hear me now?

15 ALJ LEVY: Is that it?

16 MS. BORZELLERI: Can you tap it and see if
17 it's on?

18 ALJ LEVY: It doesn't seem like it is.

19 MR. YATES: I can speak up a little.

20 ALJ LEVY: That would be good.

21 MR. YATES: And I think part and parcel of
22 some of the problems that I've had with staff in
23 discussing various things on the phone is the fact that I
24 do have a very strong voice, and when I get riled up, that
25 voice goes up and it's rather resonant.

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1 ALJ LEVY: Okay. Now remember, this is the
2 time to ask questions, not testify.

3 MR. YATES: Right. So my whole point here
4 is that the young lady indicated that I was unwilling --

5 ALJ LEVY: You have to phrase it in a
6 question.

7 Q. BY MR. YATES: Please -- you rephrase. You
8 made the remark that I was unwilling to work with staff.
9 You made the remark that Chemlite would never again be
10 compliant, was not now or never would be; isn't that true?

11 A. Basically that's what I'm repeating that
12 you told me on the phone.

13 Q. That's exactly right. You are right. And
14 on that happy note, thank you.

15 A. Okay. That's it?

16 Q. That's it.

17 A. Thank you.

18 ALJ LEVY: Hold on a second. Any redirect?

19 MS. BORZELLERI: No, your Honor.

20 ALJ LEVY: I guess I should have asked this
21 with the first witness, too. Do the Board Members have
22 any questions of this witness? Okay. Thank you for your
23 testimony. You're excused. You may call your next
24 witness.

25 MS. BORZELLERI: I have no further

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1 witnesses.

2 ALJ LEVY: Okay.

3 BOARD MEMBER ROBERTI: Could the reporter
4 read back the last two questions?

5 ALJ LEVY: The last two questions? And the
6 answer?

7 BOARD MEMBER ROBERTI: Yes.

8 ALJ LEVY: Read the last two questions and
9 answers, if you will.

10 (Previous questions read by the reporter)

11 ALJ LEVY: Okay. Thank you. Respondent's
12 case. You may call your first witness.

13 MR. YATES: Me.

14 ALJ LEVY: Okay.

15 MR. YATES: Your Honor, do I understand
16 that the first things that I have to do is present various
17 exhibits to you?

18 ALJ LEVY: Yes, have them marked for
19 identification.

20 MR. YATES: All right. If you would mark
21 these for identification, one letter dated December the
22 30th, 1997 from this agency signed by Jerry Hart.

23 ALJ LEVY: Okay. This letter dated
24 December 30th, 1997 will be capital "A" for identification
25 for the respondent.

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1 (Exhibit A marked for identification)

2 MR. YATES: This is a copy of a communique
3 from Carol Brow who was the Manager of the Secondary
4 Materials Assistance Branch of the CIWMB on January the
5 2nd, 1998.

6 ALJ LEVY: Has Counsel seen these letters?

7 MS. BORZELLERI: No.

8 ALJ LEVY: Okay. Would you like to?

9 MS. BORZELLERI: Yes.

10 ALJ LEVY: Okay. The January 2nd, 1998
11 letter is marked as Exhibit B for identification.

12 (Exhibit B marked for identification)

13 ALJ LEVY: Do you want to come up and get
14 them? We'll get some copies made for the Board Members;
15 right? You would like a copy?

16 MS. BORZELLERI: Yes, I would.

17 ALJ LEVY: Okay. Board Members and for
18 Counsel, please. Go ahead. You may proceed.

19 MR. YATES: These are various exhibits but
20 basically it's all one exhibit, your Honor. It all has to
21 do with exactly the same point, the same thing.

22 ALJ LEVY: How about if we just -- if you
23 just pick one as an example of all of them and --

24 MR. YATES: Well, really I can't do that.
25 They all collectively have to be one exhibit.

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1 ALJ LEVY: So you want to put all those
2 bottles in?

3 MR. YATES: I do.

4 ALJ LEVY: All right.

5 MR. YATES: Here?

6 ALJ LEVY: Bring them up here. Are you
7 going to be referring to them?

8 MR. YATES: I am.

9 ALJ LEVY: Why don't you put them on the
10 table there. So this will be -- how many are there?

11 MR. YATES: There are seven.

12 ALJ LEVY: Seven plastic containers will be
13 Exhibit C.

14 (Exhibit C marked for identification)

15 MR. YATES: Four of the containers are
16 labeled with Chemlite Industries. One of the containers
17 is by the Chemifax (phonetic) Company of Santa Fe Springs,
18 and the other one is by Mission Laboratories, Incorporated
19 of Los Angeles.

20 I'd like this marked for identification,
21 Public Resources Code Section 42290-42298.

22 ALJ LEVY: Public Resources Code Section
23 42290-42298 will be marked as D for identification.

24 (Exhibit D marked for identification)

25 ALJ LEVY: And the Board will take official

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1 notice of the regulations as it will take official notice
2 of all statutes and regulations that pertain to this
3 matter.

4 MR. YATES: Thank you.

5 ALJ LEVY: Okay.

6 MS. BORZELLERI: Your Honor.

7 ALJ LEVY: Yes.

8 MS. BORZELLERI: Just for clarification on
9 the record, we had asked Mr. Yates if he was going to
10 submit any documentation and he assured me that he would
11 not, and we have not seen any of this documentation. He
12 gave us copies of two letters when he first came in, but I
13 will need some time to look at this and understand the
14 relevance.

15 MR. YATES: It's your own regulation.

16 MS. BORZELLERI: Okay. The regulations I
17 have no problem with, but the other letters and so forth,
18 we need some time to look at that and see what it is that
19 he's submitting, and I don't believe he has copies for
20 everyone to look at.

21 MR. YATES: The most pertinent letter,
22 Deborah, is this one, really, of the two that I gave you
23 that you were going to copy for me.

24 MS. BORZELLERI: Okay.

25 MR. YATES: That letter from Senator

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1 Brulte's office to me.

2 MS. BORZELLERI: Okay.

3 MR. YATES: Okay. Signed by his District
4 Representative Martin Payne.

5 ALJ LEVY: Okay. If you represent that you
6 haven't read some of these letters, we will --

7 MR. YATES: She made copies since I've been
8 here.

9 ALJ LEVY: Well, you'll have an
10 opportunity. We'll give you an opportunity to review any
11 documents that you haven't read. We'll take a short break
12 before cross-examination and let you take a look at them.
13 Will that be sufficient?

14 MS. BORZELLERI: Yes. Thank you.

15 ALJ LEVY: Okay. Are these copies?

16 MR. YATES: These are copies.

17 ALJ LEVY: This is your next exhibit or one
18 that I already have?

19 MR. YATES: No, you don't have this one.

20 ALJ LEVY: I don't have this one. Which is
21 the one for the record? Are these originals? Any one of
22 these can be --

23 MR. YATES: Any one. It's all the same.

24 ALJ LEVY: So you want the January 21st,
25 2000 letter to American Research and Supply as your next

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1 exhibit for identification?

2 MR. YATES: Correct.

3 ALJ LEVY: Okay. This will be Exhibit E.

4 (Exhibit E marked for identification)

5 ALJ LEVY: Did you have a copy for Counsel?

6 Did you give her one?

7 MR. YATES: She has a copy.

8 ALJ LEVY: Great.

9 MS. BORZELLERI: We have copies of a

10 January 13th letter to U.S. Congressman Joe Baca. We have

11 a January 21st, 2000 letter to American Research and

12 Supply from Martin Payne, Representative of James Brulte.

13 ALJ LEVY: That's Exhibit E, that last one.

14 MR. YATES: And this is the other one.

15 ALJ LEVY: This is all one? These are all

16 copies. This is a January 13th, 2000 letter to U.S.

17 Congressman Joe Baca. This will be Exhibit F for

18 identification.

19 (Exhibit F marked for identification)

20 MS. BORZELLERI: Okay. We would object to

21 having the Board Members look at the documentation before

22 they're entered into evidence with some foundation.

23 ALJ LEVY: Okay. That's fine. I'll just

24 keep these here. The Board is instructed to ignore all

25 the documents that have not been entered into evidence

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1 thus far.

2 MS. BORZELLERI: Thank you.

3 ALJ LEVY: Mr. Yates, don't forget any of
4 these exhibits that you want actually entered into
5 evidence and considered by the Board you have to offer
6 them into evidence. They're just marked for
7 identification now.

8 MR. YATES: Now, the Board has --

9 ALJ LEVY: Did you hear me, Mr. Yates?

10 MR. YATES: Yes, I did.

11 ALJ LEVY: Okay.

12 MR. YATES: The Board has copies of this
13 agenda with various pages. In other words, if I refer to
14 page 13.8 or 9, you all have copies of this?

15 MS. BORZELLERI: They do have copies of all
16 of the 13 exhibits that we entered into the record in a
17 black binder and they're marked with exhibit numbers.

18 MR. YATES: So if I refer to them, then no
19 problem.

20 MS. BORZELLERI: No problem.

21 MR. YATES: Okay. This would be also
22 marked in. This is a fax that came to me the other day,
23 and this would really relate to the one I just gave you on
24 Congressman Baca.

25 ALJ LEVY: Okay.

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1 MR. YATES: All I did was make a note on
2 this, but it's pretty self-explanatory.

3 ALJ LEVY: This is a January 20th, 2000
4 letter to Mr. Yates from -- this is from staff counsel.

5 MR. YATES: Yes.

6 ALJ LEVY: Ms. Borzelleri.

7 MS. BORZELLERI: Borzelleri.

8 ALJ LEVY: Okay. I'll get it right. So
9 you want this marked next? This will be Exhibit G.

10 (Exhibit G marked for identification)

11 ALJ LEVY: Are you ready to testify?

12 MR. YATES: I am.

13 ALJ LEVY: Do you want to take the witness
14 stand? If would you please raise your right hand, I'll
15 swear you in.

16

17 WILLIAM JOSEPH YATES,
18 called as a witness to testify on behalf of himself,
19 having been duly sworn, was examined and testified as
20 follows:

21

22 ALJ LEVY: State your full name for the
23 record.

24 MR. YATES: My name is William Joseph
25 Yates, Y-a-t-e-s.

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1 ALJ LEVY: You may proceed.

2 MR. YATES: First of all, I really had a
3 question about these proceedings from the get-go and that
4 was when the young lady called as the last witness made
5 reference to the agenda here and the attachments and so on
6 and so forth. And the referencing word I kept hearing was
7 the "violation", and I kind of question that because I
8 thought we were here to ascertain if, in fact, there was a
9 violation to begin with.

10 Under the analysis, Chemlite stated it did
11 not use any of the methods allowed in the certification
12 process and would not comply. That was a statement that
13 was taken out of context and had absolutely no foundation
14 whatsoever. I will refer to the first and second exhibits
15 that you have marked for evidence. Number one, what we
16 marked --

17 CHAIRMAN EATON: Is it his exhibits or the
18 Board's exhibits?

19 ALJ LEVY: The State's exhibits or your
20 exhibits?

21 MR. YATES: My exhibit.

22 ALJ LEVY: So that would be Exhibit A.

23 MR. YATES: Making reference to 42290 --

24 BOARD MEMBER PENNINGTON: Excuse me. Can
25 we look at these documents now?

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1 ALJ LEVY: Let me see. What is Exhibit A?

2 It's the December 30th, 1997 letter? Is that --

3 MR. YATES: Okay. I got behind myself.

4 December 30th of 1997.

5 ALJ LEVY: Okay.

6 MR. YATES: It has been stated and
7 reiterated here that I, as an individual, and my former
8 company, Chemlite Industries, was unwilling to work with
9 staff and this agency. That is erroneous and I offer the
10 first two exhibits to refute that. Number one, I had at
11 that point in time --

12 MS. BORZELLERI: Objection.

13 MR. YATES: I beg pardon?

14 MS. BORZELLERI: I have an objection to the
15 introduction of these letters.

16 ALJ LEVY: Okay. Let's -- you're
17 introducing now Exhibit A, the December 30th, 1997 letter?

18 MR. YATES: Yes.

19 ALJ LEVY: Okay. And you're objecting?

20 MS. BORZELLERI: Relevance. These letters
21 appear to be talking about the plastic trash bag program.

22 MR. YATES: That's exactly right, and my
23 willingness to work with this agency, which I do feel is
24 pertinent.

25 MS. BORZELLERI: But it's not relevant to

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1 this particular proceeding.

2 MR. YATES: Well, when someone has been
3 offered and indicated by your staff that I was unwilling
4 to work with staff, I thought I would offer something that
5 proves otherwise, and that does. And prior to our ever
6 having had a situation relative to the certification
7 process of the PPRCs that we're talking about now.

8 I had been in your agency, had been talking
9 with your people. I named names and yes indeed, I had
10 talked to John Nuffer. He doesn't remember it because he
11 probably talks to hundreds of people, but yes, I had.

12 MS. BORZELLERI: I guess what I would ask
13 is what specific cooperation does this letter show.

14 MR. YATES: It shows that I was concerned
15 about my end user, who was the City of Los Angeles, who
16 were completely in the dark relative to what your law
17 stated. I took it upon myself as their supplier to become
18 enlightened myself by contacting this agency. I then
19 asked for the documentation. Carol Brow sent me 25 pages
20 as regard to what the law stated in the usage of the
21 plastic trash bags by the City of Los Angeles, and the
22 compliancy of same.

23 And on that, the strength of that, we had a
24 meeting with the City of Los Angeles with the purchasing
25 director, quality control people, et cetera, so that they

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1 understood what it was that they were supposed to be
2 reporting on an annual basis, not let alone us.

3 ALJ LEVY: Okay.

4 MR. YATES: There was one other thing about
5 this. Go ahead.

6 MS. BORZELLERI: I still object to the
7 relevance.

8 MR. YATES: Okay.

9 ALJ LEVY: Mr. Yates, I've taken a look at
10 it and I'm going to sustain the objection. I don't
11 believe it's relevant to this particular proceeding.

12 MR. YATES: Okay.

13 ALJ LEVY: Was it also Exhibit B that you
14 were offering at this time?

15 MR. YATES: Exhibit B has to do with
16 Exhibit A.

17 ALJ LEVY: Okay.

18 MR. YATES: It shows that the lady --

19 ALJ LEVY: Is there an objection to Exhibit
20 B?

21 MS. BORZELLERI: Yes.

22 ALJ LEVY: Okay. Let me take a quick look.

23 MS. BORZELLERI: On the same grounds, your
24 Honor.

25 ALJ LEVY: Okay. I'll sustain the

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1 objection.

2 MR. YATES: Commentary. I think
3 Ms. Borzelleri would agree, however, that this has to do
4 with this Board. I'll get on with it. Let's go to the
5 next exhibit.

6 ALJ LEVY: Okay. Just instructions, the
7 Board is to ignore Exhibit A and B in terms of their
8 consideration.

9 Go ahead.

10 MR. YATES: All right. The next exhibit
11 that I presented had to do with the PRC 42290 which
12 states -- wasn't that Exhibit C, your Honor?

13 ALJ LEVY: Which one? C is -- no. C is
14 the plastic containers.

15 MR. YATES: C is the plastic containers?

16 ALJ LEVY: Yes.

17 MR. YATES: Fine. Then we'll go right into
18 that, then.

19 ALJ LEVY: Okay.

20 MR. YATES: Okay. First of all, I don't
21 think it's any secret to anybody in this room, if you're
22 anywhere familiar with the way business and industry and
23 the wheels of commerce turn, that there are certain
24 standards within every single legitimate, responsible
25 American manufacturing process, and it is also true of

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1 what we call blow molding extrusion or injection molding
2 process in plastics.

3 It has been indicated that Chemlite
4 Industries is a manufacturer because their name is on a
5 label and that therefore they should file certification
6 forms. And this is not just Chemlite, this is a whole
7 bunch of companies. It was also suggested that there was
8 a random selection process, but we found out different,
9 didn't we. We found out that because Chemlite's bottle
10 was sitting here on your copying machine, you chose it
11 that way. That to me is not random selection process.

12 Finally, I'm looking at all the bottles
13 sitting on this table, and you see that the first four up
14 front have Chemlite's logo on them. I have made a
15 concerted effort for several years to find out exactly
16 what you people were looking for. I was not privy to the
17 information and so therefore I refused to file a
18 certification form. Why? If I did, I would be setting
19 myself up for perjury.

20 No one in the industry was willing to give
21 us information and there's a reason for this. A
22 distributor is not a manufacturer, period. The
23 manufacturer is defined as one who shapes, molds, puts
24 together, does something, but he makes it by either hand
25 or equipment. That's the definition of a manufacturer.

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1 The ironic thing about all I'm saying here in relative to
2 some of these things that are on the labels is that
3 Chemlite's label stands out right there on the first four
4 bottles, and those first four bottles were made by four
5 separate plastic manufacturers. And I would like to
6 submit this right now so that you people understand what
7 the actual industry standard does.

8 MS. BORZELLERI: Your Honor --

9 MR. YATES: If you look at the bottom of
10 the bottle -- if you look at the bottom of the bottle,
11 forget about the label because the label means nothing.
12 This could be my logo or it could be 150 other companies
13 who buy the same thing from the same chemical filler.
14 However, we don't know who made the bottle, but there's
15 the bottle logo right there. Those are the people who
16 made the bottle. And it is on the bottle, isn't it, your
17 Honor? As is this one. As is this one. That says
18 Propack. Propack Industries made that bottle. Propack
19 made that bottle which says Chemlite on it. S and W
20 Plastics of Los Angeles County made that bottle, but it
21 still says Chemlite on it.

22 ALJ LEVY: And you're offering these into
23 evidence?

24 MR. YATES: You're darn right I am.

25 ALJ LEVY: Any objection?

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1 MS. BORZELLERI: No.

2 ALJ LEVY: Okay. Exhibit C is admitted
3 into evidence.

4 MS. BORZELLERI: I would suggest that any
5 additional bottles that have a different character be a
6 different exhibit. Are you -- you're going to enter those
7 others?

8 MR. YATES: They're all RPPCs, they're just
9 different sizes.

10 MS. BORZELLERI: Okay.

11 MR. YATES: They are all embossed with the
12 name and the manufacturer, the name and the logo or both.

13 MS. BORZELLERI: Okay. And each of those
14 up there which are marked as Chemlite?

15 MR. YATES: Yes. That is an industry
16 standard of the people who blow mold plastic, although
17 this is a very, very small, little name here --

18 ALJ LEVY: Just to make the record clear, I
19 see on the bottom of this bottle there is an "SW", there's
20 some numbers, and then there's a number "2" encircled by a
21 triangle.

22 MR. YATES: HDPE, which would be high
23 density polyethylene.

24 ALJ LEVY: Which one are you representing
25 is the manufacturer's label?

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1 MR. YATES: Right there.

2 ALJ LEVY: "SW"?

3 MR. YATES: Yes. That would be a batch
4 number generally speaking. They have means of
5 identifying.

6 ALJ LEVY: And do you know what "SW" stands
7 for?

8 MR. YATES: Stewart Worther or something
9 like that. Anyway, it's a plastic company. And by the
10 way --

11 ALJ LEVY: This is on, by the way, the
12 one-gallon yellow container that's part of Exhibit C.
13 It's called "Opticlean product", I guess.

14 MR. YATES: Now, the reason that I'm
15 showing you these things is this. We could have had a
16 paper label on these bottles.

17 ALJ LEVY: Why don't you go back and
18 testify.

19 MR. YATES: Oh, okay. There's one more.

20 ALJ LEVY: Okay.

21 MR. YATES: But I was going to make
22 reference to that bottle specifically.

23 ALJ LEVY: Do you need the bottle to do
24 that?

25 MR. YATES: No. No, you can see it.

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1 ALJ LEVY: All right.

2 MR. YATES: All right. So the situation
3 here is that if we had a paper label, I don't think
4 there's anybody in this room that would disagree with me
5 that if the bottle got wet externally, that the paper
6 label could fall off, couldn't it. And therefore, who
7 would we then determine to be the manufacturer of the
8 bottle.

9 Because again, I reiterate my former
10 position relative to industry standards. The plastics
11 industry, responsible companies all emboss or hot-stamp
12 bottles on the bottom for identification, not only with
13 their own identification but as I pointed out, your Honor,
14 batch numbers.

15 MS. BORZELLERI: Objection.

16 ALJ LEVY: Yes.

17 MS. BORZELLERI: I would like to see a
18 foundation for the industry standard Mr. Yates discusses.

19 MR. YATES: Before I get into that, why
20 don't we discuss definition by Merriam Webster's
21 dictionary.

22 ALJ LEVY: Okay.

23 MR. YATES: What in fact is a manufacturer?
24 A manufacturer is one who makes, produces, fabricates,
25 fashions, forms, molds, forges, puts together, or shapes

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1 an end product. Chemlite does none of these things.

2 ALJ LEVY: Mr. Yates, what you're being
3 asked to do is lay some foundation for your knowledge
4 about these embossed labels on the bottom of the bottle.

5 MR. YATES: My knowledge has been imparted
6 to me by the people within their trade association.

7 ALJ LEVY: Which is called --

8 MR. YATES: And by the way, while we're on
9 that one --

10 ALJ LEVY: All right.

11 MR. YATES: -- a lady made a statement here
12 a little while ago that said I was the current President
13 of my trade association.

14 MS. BORZELLERI: Objection.

15 MR. YATES: That was her understanding.

16 MS. BORZELLERI: Objection. Can we get a
17 ruling on the other issue?

18 ALJ LEVY: Yeah. We're going to take one
19 at a time here. You need to lay a foundation as to your
20 knowledge.

21 MR. YATES: All right. To my -- here's the
22 good faith effort I put forth. Number one, I went to my
23 contract private label filler, and by the way, part of
24 this testimony that was given or part of the record said
25 that we were a private label filler, which is erroneous.

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1 Chemlite was never a private label filler. We buy from
2 private label fillers, which means the glass cleaner in
3 question which you had on your copying machines -- and by
4 the way, I would also notice something else that I thought
5 was rather interesting, that a specialty cleaner is
6 exempt. That happens to be a specialty cleaner.

7 ALJ LEVY: Mr. Yates, let's just stick to
8 one thing at a time.

9 MR. YATES: Okay.

10 ALJ LEVY: Okay. You were testifying about
11 the practice of an industry about embossing labels --

12 MR. YATES: That's right.

13 ALJ LEVY: -- on the bottom here --

14 MR. YATES: Yes.

15 ALJ LEVY: -- and there's been an
16 objection because you're testifying about something and we
17 don't know what the source of that information is.
18 Basically it's --

19 MR. YATES: The source of the information
20 is there is an organization in southern California, the
21 Society of Plastics Industries. They're listed in Orange
22 County. And it just doesn't have to do with blow molding,
23 it has to do with injection molding and a lot of other
24 things as well. But the fact of the matter is that these
25 things come under a certain criteria that the blow molders

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1 themselves set up as responsible for the manufacture and
2 identification. What they're trying to fight is the
3 offshore stuff coming in here that have no identification
4 on them at all. And by the way, I walked into one of your
5 state offices --

6 ALJ LEVY: No, wait a minute.

7 MS. BORZELLERI: Objection.

8 ALJ LEVY: Hold it. Hold it. Hold it.

9 You're getting way off course here. I'm trying to help
10 you lay a foundation for your testimony that these labels
11 on the bottom of these bottles are the manufacturer of the
12 bottle.

13 MR. YATES: That's exactly right.

14 ALJ LEVY: Okay. And I'm not going to
15 allow that into evidence unless you can lay a foundation
16 about what the source of that information is. In other
17 words, did you have a conversation with somebody and who
18 was that person and what was their position?

19 MR. YATES: It started with a gentleman by
20 the name of Mr. Robert Munyun who, by the way, is listed
21 in the letter from Senator Brulte's office because he
22 followed up on my follow-up. Mr. Munyun indicated to me
23 that there was no way that he could, relative to our
24 product, tell me anything about the certification because
25 they buy tens of thousands of bottles and fill them and

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1 they buy them from a number of different companies. So in
2 following up, Mr. Munyun gave me five separate company
3 names, all of whom I called and all of whom refused to
4 give me any information because I was not their direct
5 customer. That's the bottom line.

6 So when I said to the young lady on the
7 phone that I was trying an exercise in futility over a
8 period of months, I really meant it. We've contacted all
9 kinds of people on this stuff and we cannot get the
10 information you seek. What I'm trying to elucidate on
11 today is how do you go about getting it.

12 The truth of the matter is that if you laid
13 off of people in distribution and you went after the
14 people who are actually manufacturers -- and someone
15 eluded to the Thomas Register a little while ago. I'll
16 elude to it right now. There's a list of 660
17 manufacturers in the Thomas Register and they said they
18 couldn't find people who plastic blow mold? There they
19 are right there.

20 So anyway, yeah. We've gone to a lot of
21 trouble on this thing, and we have attempted to help. And
22 then it got extremely frustrating and plus the fact there
23 were other things that people brought out disbelieving me,
24 questioning my integrity. That really ticked me off.

25 ALJ LEVY: Okay. In any case -- all right.

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1 Is there an objection?

2 MS. BORZELLERI: Many.

3 ALJ LEVY: All right. Just take one at a
4 time, will you?

5 MR. YATES: All right. You want to
6 question me on the -- you want to question me on my
7 presidency of my trade association?

8 MS. BORZELLERI: No. I would just like to
9 have a ruling on whether those -- the fact or the thing
10 that you're testifying to is supported by those -- what
11 the foundation is for you placing those into evidence and
12 who knows -- what documentation where that name on the
13 bottom is what you're claiming that it is.

14 MR. YATES: Okay.

15 MS. BORZELLERI: We have no evidence of
16 that.

17 MR. YATES: All right. Deb, I know that.
18 However, do we not -- for instance, if we're driving down
19 the street and we see a big supermarket with a great big
20 blue and white "A" on it, don't we know that's
21 Albertson's? Don't we know that by their logo, their
22 identification? The same thing holds true here. These
23 are identifying symbols of the manufacturer.

24 ALJ LEVY: All right. The difference is
25 that this is an administrative hearing and we follow the

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1 rules of evidence and --

2 MR. YATES: There's the evidence. Those
3 are logos and they are trade symbols. What more do you
4 want?

5 ALJ LEVY: I don't know that you're the
6 expert that can tell us that information. They could be
7 anything.

8 MR. YATES: Okay. Well, here's another
9 problem that we have with this, your Honor.

10 ALJ LEVY: I'm going to sustain --

11 MR. YATES: May I please?

12 ALJ LEVY: Well, unless you're going to lay
13 a foundation for --

14 MR. YATES: No. It isn't going to be much
15 of a foundation, but it's going to show you the
16 consternation that we feel in trying to comply. Number
17 one, I could take my product right --

18 MS. BORZELLERI: Objection.

19 MR. YATES: -- with a given --

20 ALJ LEVY: Okay.

21 MR. YATES: What?

22 ALJ LEVY: Mr. Yates, we've got to follow
23 procedure here. I will not allow into evidence as truth
24 of the matter that these are manufacturer labels.

25 MR. YATES: They are.

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1 ALJ LEVY: Well, that's fine. I will allow
2 in that you believe that they are, that's it's your state
3 of mind that these are labels. I'll allow that to come
4 in, that you believe they are --

5 MR. YATES: Your Honor --

6 ALJ LEVY: -- but you're going to have to
7 have somebody come in here that represents the
8 manufacturer to say in fact that this is their label.

9 MR. YATES: Then why --

10 ALJ LEVY: -- rules of evidence --

11 MR. YATES: Thank you, sir. Why doesn't
12 this Board get in contact with they who manufactured?
13 That's my whole point here.

14 BOARD MEMBER JONES: Judge, may I ask a
15 question of you?

16 ALJ LEVY: In camera. Just one moment.

17 (Discussion held off the record)

18 ALJ LEVY: We've been going for quite a
19 long time and I usually break every hour and a half for
20 the court reporter, so we're going to take a ten-minute
21 break at this time. We'll recess for ten minutes.

22 (Brief recess taken)

23 ALJ LEVY: Back on the record.

24 Mr. Yates, you may proceed.

25 MR. YATES: Thank you. Is this still on?

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1 One of the things that I presented was the letter from
2 Mr. Brulte's office by his District Representative, Martin
3 Payne, and in that letter he had followed up on Mr. Robert
4 Munyun of the Gen Labs Company, Incorporated who, by the
5 way, were in fact the contract packaging filler of the
6 glass cleaner.

7 If you read paragraph three of that letter,
8 it reads, "He also indicated to me," "he" being
9 Mr. Munyun, "That for sometime now you have attempted to
10 resolve this question but because of their inability to
11 provide an answer based upon the facts on hand, or not as
12 the case may be, your efforts have been in vain.
13 Mr. Munyun went on to concur with your assessment made at
14 the time of our meeting that without the ability to
15 examine these bottles and accurately assess the situation,
16 you could easily be setting yourself up for perjury by
17 making a statement of the recycled content in either
18 direction." That is true.

19 I called Mr. Munyun and I got the names of
20 five of the various bottle manufacturers. I talked to
21 several of the people and they said the same thing to me.
22 How in the dickens do we know when Mr. Munyun buys from 20
23 or 30 different bottle manufacturers, all of whom are
24 responsible because they all label the bottom of their
25 bottle but that doesn't necessarily mean that Chemlite's

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1 product, Krystal Clear, would come into CIWMB's copying
2 machine one month from one manufacturer and come in from
3 the same manufacturer the following month.

4 It doesn't follow because in the production
5 scheduling of the chemical product they will pull product
6 from their pallets, put them on the line, and fill
7 whatever bottle is available as long as it meets with the
8 criteria of the chemical contained therein.

9 So do you see, then, why our hands have
10 been tied attempting to find what the content was in a
11 bottle that came into a state facility in 1996 and was
12 asked of me in 1998 when the product was long gone, having
13 been swiped over your copying machine and hundreds of
14 others?

15 So these are the difficulties that have
16 been imposed upon me as an individual, and I'm sure upon
17 numerous other people who may have been in the same boat,
18 attempting as best we could to do the job for you guys,
19 but then with the telephone follow-ups when we turn around
20 and say look, I can't comply. And I was honest about it,
21 I can't. And Chemlite will not comply in the future. I
22 said that. I said to that young lady, "Did I say it
23 wouldn't comply in the future," and she said "yes" and
24 there was a reason for that, because in 1998 Chemlite
25 decided to dissolve. And in truth, I knew they weren't

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1 going to comply anymore because there wasn't going to be a
2 company. That's the reason. It wasn't that they were
3 unwilling to comply. If they remained in business, of
4 course, or try as best we could to help you people in
5 determining who in the hell makes these bottles to begin
6 with.

7 Now, I determined a number of things. Yes,
8 there are seven different manufacturers of bottles sitting
9 on that table, but there's only three different company
10 names, none of whom make bottles.

11 So I suggest that we turn around and turn
12 this entire thing around and say okay. Let's go after --
13 let's go after the internet, as I did the other day, and I
14 came up with, just here in my own local area, 59 separate
15 companies listed in their trade. Not in janitor supplies,
16 not in supermarkets, not in department stores, but their
17 trade. It's called plastics blow molding, and that's the
18 people you want to talk about. Not me, not Albertson's,
19 not Sears, the people who made the damn bottle. And
20 here's a list that I made, and gee whiz, if you guys want
21 it, go after these folks. Find out what their compliance
22 was in 1996. Is there any objection to that one?

23 I have another list here from Gen Labs of a
24 couple of other companies I didn't have on this list, so
25 that makes 64. This is just in California. This has

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1 nothing to do with the rest of the United States.

2 I would also like to make reference to my
3 trade association which is known as the International
4 Sanitary Supply Association of over 4,100 companies. I
5 will submit this to you just to read. I'm not going to
6 talk to you about an exhibit or mark this or anything
7 else. You will find by just looking at the page that the
8 norm in our extreme as janitor supply and custodial
9 product distributors, that private label brand is the
10 norm, not the exception. So therefore, you could pick up
11 the phone right here in Sacramento and call a good friend
12 of mine who owns Sac-Val Janitorial Supply and darn it,
13 he's got his name on labels. See what kind of trouble he
14 would have in doing the same thing you've asked of me.
15 Here it is, your Honor.

16 ALJ LEVY: Is this something you wanted
17 marked for identification?

18 MR. YATES: No, I don't. Just take a look
19 at it.

20 MS. BORZELLERI: Objection.

21 MR. YATES: Copy of the Thomas Register
22 that you made reference to before, or at least somebody
23 did. I have a list here that comes from America Online.
24 I have another list here that comes from the Thomas
25 Register that I simply pulled off this past Sunday.

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1 Plastic bottle manufacturers in the United States that
2 they have listings of number over 500, and it's right
3 here. And again, they're not distributors of chemicals,
4 they're not contract packaging fillers, they're people who
5 make the very bottles you're asking for the certification,
6 the compliancy of the post-consumer and secondary waste
7 and what you want accomplished here in California relative
8 to our environment. So what I'm saying is I think, guys,
9 you're barking up the wrong tree. How about going after
10 the people who make the thing?

11 Finally, reference my signature on page 2
12 of the small business and/or disabled veteran business
13 enterprise certification application, page 13.8, section
14 E, which makes reference to supplier commodity firm. It
15 doesn't say manufacturing firm, it says commodity firm.
16 It is checked off "distributor". Number three, it says
17 "non-manufacturer". That is checked off, and the several
18 SIC codes that go under the non-manufacturer commodity
19 industry group name being industrial supplies, paper and
20 paper products, chemical products, sporting and
21 recreational goods and clothing and apparel. That's what
22 Chemlite is and that's what Chemlite was certified as, not
23 a manufacturer.

24 ALJ LEVY: Okay. Does that conclude your
25 testimony?

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1 MR. YATES: No.

2 ALJ LEVY: I'm sorry.

3 MR. YATES: I now want to make reference to
4 the RPPC main list of 500 randomly selected companies. I
5 found not one plastic blow molder on this list and I find
6 it hard to believe. Not one. I find 3M, wonderful
7 company out of Minneapolis. I find Aldridge Chemical out
8 of Milwaukee, Wisconsin, who I am intimately familiar
9 with; Amret Corporation from Marietta, Georgia who I buy
10 from and have for many years. All of them are chemical
11 companies, fillers. They don't make bottles.

12 I guess I've been talking a long time and
13 I've got to get back 480 miles to San Bernardino and I
14 don't want to do it tonight, but I sure as hell would like
15 to get the proceedings over with.

16 ALJ LEVY: All right.

17 Cross-examination.

18 MS. BORZELLERI: I have nothing, your
19 Honor.

20 ALJ LEVY: All right. The witness is
21 excused. I'm sorry. What am I talking about. The Board
22 might have some questions. The Board might have some
23 questions of you, if you want to.

24 MR. YATES: I was just going to retrieve
25 this, your Honor.

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1 ALJ LEVY: If you'll stay up at the podium.

2 Who has a question of the witness?

3 BOARD MEMBER PENNINGTON: I do.

4 ALJ LEVY: State your name for the record.

5 BOARD MEMBER PENNINGTON: Yes. Daniel
6 Pennington.

7

8 EXAMINATION

9 BY BOARD MEMBER PENNINGTON:

10 Q. Let me understand your business. You have
11 somebody else fill the bottle, you get the chemical and
12 the bottle and then you distribute it; is that correct?

13 A. Right.

14 Q. Or do you fill the bottles themselves?

15 A. No. To give you the chain of events,
16 number one, I've been in my business for 42, going on 43,
17 years. I entered the business in April of '57. At that
18 particular point in time, I was a rep for a company, a
19 chemical company. They in turn actually made the
20 chemicals. They even made their own drums and so on. In
21 that instance, you know, that would have been fine, but
22 the industry over the years has gone this way, same way as
23 the automotive business.

24 Q. Excuse me. How about just telling me what
25 Chemlite does.

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1 A. Okay. All right. Chemlite, number one,
2 goes to various contract packaging fillers, asks for
3 samples of their respective chemical cleaners, detergents,
4 whatever it happens to be, takes them back to their
5 premises and evaluates same, and if it meets with my
6 criteria, at the time when Chemlite was still functioning,
7 if it met with the criteria that I set up as I wanted to
8 have our label on a good product, then we would ask them
9 their private label under our logo. But at no time did we
10 ourselves make the product in the can or container or the
11 container itself or silk screen the logo.

12 Q. So you consider yourself a distributor.

13 A. Absolutely.

14 BOARD MEMBER PENNINGTON: Okay. Thank you.

15 MR. YATES: Thank you, sir.

16 ALJ LEVY: Okay. Mr. Jones.

17 BOARD MEMBER JONES: Thank you. Steve

18 Jones.

19

20 EXAMINATION

21 BY BOARD MEMBER JONES:

22 Q. Your defense is -- you offered in the
23 Public Resources Code as a piece of one of your exhibits,
24 and I think it was also offered as part of the staff's or
25 the State's exhibit, and the PRC Code doesn't put the

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1 burden of the 25 percent recycled content on the maker of
2 the packaging but on the person that either manufactures
3 it or generates it. That's what's termed a generator.
4 And a distributor -- I mean this is in code. This is what
5 you had offered in as one of your exhibits.

6 A. No. One of my exhibits, Mr. Jones, was I
7 attempted to offer an exhibit relative to the plastic
8 trash bags. That was objected to.

9 Q. No. No. When you -- okay. Let me back
10 up. The State put in the PRC Code, irregardless, that
11 what governs is the Code and the Code determines and
12 defined manufacturer based on the law and not on Webster's
13 dictionary, and the law that was written, SB 235 Hart in
14 '91 that talked about plastic packaging containers defined
15 manufacturer, that it means the producer or generator of a
16 product that is sold or offered for sale in the state and
17 which is stored inside a Rigid Plastic Packaging
18 Container.

19 So while there was an awful lot of defense
20 and a lot of discussion, and it has been discussion that's
21 gone on for years as to who made the container, who
22 actually built the container, the heart of the matter is
23 that as the generator or the distributor, that's the
24 person that is considered the manufacturer and liable or
25 responsible under this law, not Webster's Dictionary.

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1 A. Agreed.

2 Q. Okay. Good.

3 A. However --

4 Q. Okay. Go ahead.

5 A. -- I'd like to make a commentary. How

6 could you determine -- and that was what I was trying to

7 get at before. How could you determine who generated if

8 the label isn't there?

9 Q. I'm looking at seven containers --

10 A. However, I can --

11 Q. -- and the labels are on all seven.

12 A. -- go to the janitor's closet and get

13 cleaner and wipe all the ink off of every one of them,

14 and I'm serious, and if the ink goes off of there, where

15 do we go then? We go back to he who made it.

16 Q. We can't.

17 A. Why?

18 Q. That is not within our statutory

19 authority.

20 A. Let me ask one other question because this

21 is important to me to convey to our people. When I say

22 our people, I'm still a past president of my association.

23 And you know, I'm in the learning process, too, when it

24 comes to Sacramento. But by and large, our industry is --

25 the guys are really up in arms about this thing and

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1 they're anxious for my remarks when I get back in southern
2 Cal. When we turn around and have, let's say, Joe Blow's
3 logo on the thing and you're telling me that he is now
4 responsible for having generated the waste --

5 Q. Generated the product.

6 A. Or generated the product, when in reality
7 the majority of products that we sell must by law be
8 virgin resin. Has that ever occurred to this Board? And
9 do you know why? Because so many things that we sell, we
10 don't know whether they are going into a hospital or a
11 food service handling facility. We don't know that, so
12 therefore, everything that we order that has to be put on
13 the shelves -- cleaner, disinfectants, deodorants,
14 germicides, sanitary items, et cetera, et cetera -- must
15 come in virgin resin bottles. And you have a notation
16 that I noted before and it said "specialty chemicals".

17 Q. May I ask one other question?

18 A. Yes, sir.

19 Q. A follow-up question. Did you make our
20 staff aware of that restriction as part of your
21 certification process?

22 A. I didn't certify, sir.

23 Q. So what you're offering now is
24 testimony --

25 A. What I'm offering is what I have learned

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1 by having spoken to the people who make the bottles.

2 Q. Okay. So then --

3 A. But they in turn can't certify me because
4 they don't know whether it was their bottle or not.

5 Q. So when you say that the material has to
6 be virgin so you can sell it by law, are you telling me
7 that you learned that since this process or that that was
8 one of your operating conditions?

9 A. No, no. It was one thing that quite
10 frankly as many years as I've been in this business I
11 didn't give it a hell of a lot of thought, and all of a
12 sudden it made perfect sense to me. Sure, my God. I'm
13 selling Patton State Hospital, Metropolitan, Norwalk and
14 so on and so forth and other places, other facilities
15 where if you have any kind of non-virgin resin and you
16 have product that is listed by the EPA and the FDA as
17 being hazardous, we could have all kinds of problems with
18 the public's health.

19 And if I read to you our code of ethics
20 from our International Sanitary Supply Association, one of
21 the concepts that we are worldwide concerned about is the
22 public health.

23 Q. The Opticlean or whatever the stuff was,
24 is that hazardous?

25 A. No.

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1 Q. Was it ever listed as hazardous?

2 A. No. You mentioned Opticlean.

3 Q. Or whatever one, whatever the --

4 A. The glass cleaner?

5 Q. I don't know. Maybe it was this container

6 here.

7 MS. BORZELLERI: Exhibit 3, yes.

8 Q. BY BOARD MEMBER JONES: How about Krystal

9 Clear?

10 A. That was the original.

11 Q. Is that hazardous?

12 A. It comes with a -- it comes with a hazmat

13 symbol, yes, on the MSDS sheet, which is sent in with

14 every shipment.

15 Q. Everything has an MSDS sheet.

16 A. Yes, sir.

17 Q. I'm asking is it hazardous.

18 A. Yes. If you want to put it that way, yes.

19 Water is hazardous.

20 Q. Okay. So --

21 BOARD MEMBER PENNINGTON: If you slip on

22 it.

23 Q. BY BOARD MEMBER JONES: The -- is there a

24 successor company to Chemlite?

25 A. No.

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1 Q. Is -- when you stated your name it was
2 William J. Yates?

3 A. That is exactly correct. That's the way
4 it's been for 64 years.

5 Q. It's not William J. Wolfe Yates?

6 A. Let me explain that. When Mr. Yates
7 arrived in California, Mr. Yates met Helen Wolfe, who at
8 that time was a widower. He married Helen Wolfe. We took
9 one another's names. Unfortunately, Helen Wolfe came into
10 the business with Mr. Yates which destroyed the business
11 and the marriage. So we took our respective names back.
12 So I'm back to being Billy Yates.

13 Q. I just wanted to know because I kept on
14 seeing different names and I just wanted to find out.
15 Thank you.

16 ALJ LEVY: Any other Board Members have
17 questions? Senator Roberti.

18 BOARD MEMBER ROBERTI: Yes.

19

20 EXAMINATION

21 BY BOARD MEMBER ROBERTI:

22 Q. Mr. Yates, I've heard everything you say,
23 and everything seems to make very good sense to me except
24 for the fact that I think the statute is just not in your
25 favor. There's a lot of logic to what you say, but we

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1 have to try to follow the statute, and it seems that the
2 statute says that it's the product manufacturer that is
3 liable, that has the burden of informing the Board of
4 content and the name of the entity that manufactured the
5 product held by the container. That is not the container.
6 I don't know why that's written that way, but that's not
7 the container. It is the material that's inside the
8 container.

9 A. Okay. We didn't make that either.

10 Q. I know you didn't. I know you didn't.
11 That's why I'm saying there's a lot of logic to what
12 you're saying.

13 A. Thank you.

14 Q. I'm sympathetic, but you don't have the law
15 on your side.

16 A. I understand that and I've read the
17 statute, but my point to all of you gentlemen and ladies
18 is this. In a court of law, there isn't a judge in the
19 world who would disregard the commentary I'm going to make
20 right now. A manufacturer is he who makes something,
21 period. Since 1567, that is the definition. It hasn't
22 changed. So my questioning of this is how in God's name
23 could I possibly be working in a good faith effort and
24 sent down forms to you people when I didn't have those
25 answers and there were those who refused to give them to

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1 me. So how can I do it? The answer is I can't, and I
2 wouldn't.

3 Q. What do you mean those that refused to
4 give them to you?

5 A. Because they -- I stated it before,
6 Mr. Roberti.

7 Q. Give me an example of the question that
8 you would want to ask of that entity and then I'll sort of
9 make up in my own mind why they might want to refuse to --

10 A. Okay.

11 Q. -- give you an answer.

12 A. Sir, my name is Bill Yates. You don't
13 know me, but I'm involved with American Research. I used
14 to be the President of Chemlite Industries. It came to my
15 attention that I had some bottles with some glass cleaner
16 in them that were made by your company. Can you tell me
17 what percentage of post-consumer and secondary waste you
18 utilize. And he said, "How the hell do I know who you
19 are? You're a phone call. You're not visiting me in
20 person."

21 Q. I understand.

22 A. He's 95 miles away.

23 Q. I understand your point and why would he
24 want to be candid with you --

25 A. Because I'm not his direct customer.

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1 That's the biggest problem.

2 Q. I understand. You're not his direct
3 customer and why would he want to lead the road of
4 regulation to him.

5 A. Right. Plus, Mr. Roberti, there are other
6 bottles there, and each and every one of those
7 manufacturers could have put that bottle together.

8 Q. I totally understand that. Your having
9 said all that, I still don't think you have the law on
10 your side. Now that --

11 A. I understand that.

12 Q. So my own thought thinking out loud is
13 that it appears that you're in violation, but it also
14 appears to me that considering that the violation is of a
15 law which gives the person who is on more authority than
16 you to disclose an opportunity to palm it off on somebody
17 who has less authority, I personally will take that into
18 consideration when I vote on the matter. But you are in
19 violation, it appears.

20 A. Again, I understand that, but --

21 Q. Don't you --

22 A. One of the reasons I wanted to be here was
23 not only on my own behalf, on behalf of other members of
24 my association and to straighten the darn thing out,
25 hoping, hoping that there may be some way that we can

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1 amend this statute and make it read the way it should.

2 Q. As you understand, this Board cannot do
3 that.

4 A. Who can?

5 Q. The legislature.

6 A. Who do we talk to?

7 Q. There are an awful lot of legislators who
8 are interested in this bill, so I'm sure you can find
9 somebody. And probably airing it here doesn't hurt, but
10 we can't make that decision. We have to --

11 A. Then I was certainly in error, ladies and
12 gentlemen, because I thought that everything emanated
13 right from these chairs right here. I really did.

14 BOARD MEMBER PENNINGTON: Don't we wish.

15 MR. YATES: And I'm a little bit sorry for
16 getting a little bit up, you know, with some of the folks,
17 but I'm sure that after you've heard what I had to say and
18 why I'm here and so on and so forth that you can
19 understand that I did. I got hot under the collar with
20 some staff, and I don't like to do that, but I thought I
21 was fighting for my rights and the rights of others.
22 That's about all I have to say.

23 ALJ LEVY: Any other questions?

24 CHAIRMAN EATON: I have a couple. Dan
25 Eaton.

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1

2

EXAMINATION

3 BY CHAIRMAN EATON:

4

Q. I share some of the same concerns of my

5

colleagues, but I have a couple of questions because you

6

seem like an individual who's been somewhat successful in

7

business and know their way around both the business world

8

and the political spectrum to some degree. What's

9

puzzling me is we've had a number of these sort of issues

10

that have arisen with regard to individuals under the

11

statute that talk about the name on the label, and even

12

though he or she or the company may not actually

13

manufacture it, but for purposes of the statute -- and

14

that's a public policy question -- have identified you, as

15

Chemlite, when I talk about it as the manufacturer for

16

purposes of statute. Why during the two years-plus did

17

you not talk with the staff, that that's --

18

A. I did.

19

Q. But --

20

A. It's a matter of record that every time I

21

got a letter, I called.

22

ALJ LEVY: Wait until the whole question is

23

asked.

24

Q. BY CHAIRMAN EATON: Did you inform them in

25

any manner that the information was not available from the

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1 manufacturer?

2 A. I did, and unfortunately the one thing
3 that I do have to say that is bordering on the negative
4 relative to staff was staff wanted to hear themselves talk
5 and not me, and that's unfortunate. And I understand that
6 they have a job to do that they've been appointed to do,
7 but you've got to listen to the people and listen and
8 observe what it is they have to say. And I was attempting
9 to do that, but I wasn't getting through to anybody.

10 Q. Did you in any form write a letter to the
11 Board or the staff informing them that you tried to make
12 an effort to obtain the information but you didn't?

13 A. No.

14 Q. And that's what puzzles me because --
15 when did you start --

16 A. One of the reasons --

17 Q. When did you start inquiring of Mr. Munyun
18 as to whether or not --

19 A. In 1998 when you asked.

20 Q. And was he able to provide or did you
21 provide --

22 A. Nothing.

23 Q. Did you even ask staff --

24 A. I even went to a couple of plants that I
25 thought made for him.

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1 Q. I'm just trying to be of assistance here
2 to see --

3 A. Okay.

4 Q. What's puzzling me and what's bothering me
5 is the fact that there seems to be "the law doesn't apply
6 to me, therefore I'm not going to comply with the law; and
7 I don't think that law is very applicable to me and,
8 therefore, I'm not giving you any information." That's
9 what's been presented, and some of your own testimony has
10 indicated that. I'm trying to find out why didn't you
11 then talk to the staff and say I've made that effort
12 because in other numerous cases that you may not have been
13 aware of --

14 A. I did.

15 Q. To whom?

16 A. Young lady that spoke, there was another
17 gentleman that I talked to. There was another comment --
18 there was another commentary earlier on that made
19 reference to my refusal of a letter, a certified letter.
20 I just wanted to touch on that because the certified
21 letter was sent to 741 South Lugo and that was Chemlite's
22 address and they were out of business, so how could
23 anybody have received it?

24 Q. Are you in the same business that Chemlite
25 was in before?

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1 A. I am in somewhat the same business. I'm
2 not doing as much chemicals nor am I doing as much
3 equipment, machinery.

4 Q. Is your new business at that same address?

5 A. No. As a matter of fact, you had my
6 letterhead. It said 2982 La Verne Avenue, Highland,
7 California.

8 BOARD MEMBER JONES: If nobody else has
9 any, I just have one more question.

10 ALJ LEVY: Mr. Jones.

11 BOARD MEMBER JONES: Just a quick one.

12

13 FURTHER EXAMINATION

14 BY BOARD MEMBER JONES:

15 Q. You said that the filling of the container
16 was to your criteria; correct? You determine with whoever
17 is doing this what your packaging is going to look like?

18 A. No. They have an art department. I asked
19 them to do, for instance, our address and so on and so
20 forth, design me a logo, and that's exactly the way that
21 logo came about many years ago.

22 Q. I'm not talking about the logo. I'm
23 talking about every one of those containers -- there's two
24 the same, I guess.

25 A. Yes.

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1 Q. There's like five different types of
2 containers there.

3 A. Yes.

4 Q. Do you specify what that container is to
5 look like?

6 A. No.

7 Q. You just -- whatever they give you?

8 A. In other words, it's a gallon container,
9 it's a pint container, it's a quart container. The one
10 thing that we might do is, for instance, with the state
11 specification which we had on the glass cleaner, they
12 wanted a sprayer top, and that sprayer top was specified
13 by the State to meet the State's criteria.

14 Q. All right. But could you put that sprayer
15 top on top of that bathroom cleaner?

16 A. Yes.

17 Q. All right. So did you say I want that
18 container for --

19 A. No.

20 Q. -- my thing? You were at their mercy?

21 A. No. I simply said I want a 32-ounce
22 container with a trigger sprayer on it, packed a dozen to
23 the case to be shipped to anywhere in California to state
24 facilities. That was the specification. Those bottles
25 never hit my place of business. I never saw one.

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1 BOARD MEMBER JONES: Okay. Thanks.

2 BOARD MEMBER MOULTON-PATTERSON: Linda
3 Moulton-Patterson.

4

5 EXAMINATION

6 BY BOARD MEMBER MOULTON-PATTERSON:

7 Q. Mr. Yates.

8 A. Yes.

9 Q. In your conversations with the staff, did
10 they not try and explain to you the law that we were --

11 A. Yeah. I was reading it along with them.

12 Q. Thank you.

13 A. And that was why I had indicated that I
14 didn't understand why a distributor could be termed a
15 manufacturer because they're contradictory terms.

16 Q. There are a lot of laws that I don't agree
17 with, but that doesn't mean that I don't comply with them.

18 A. I know. Thank you.

19 ALJ LEVY: Okay. Any other questions?
20 Ms. Borzelleri, do you have any?

21 MS. BORZELLERI: No.

22 ALJ LEVY: Okay. You're excused. Thank
23 you for your testimony. Do you have any other witnesses?

24 MR. YATES: I think my good wife is
25 indicating that she's tired and we'll take it at that.

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1 ALJ LEVY: Thank you.

2 MR. YATES: Thank you.

3 ALJ LEVY: Rebuttal?

4 MS. BORZELLERI: No, your Honor.

5 ALJ LEVY: Okay. Just one moment.

6 Okay. Closing arguments.

7 MS. BORZELLERI: Before we do that --

8 ALJ LEVY: You probably want to offer your

9 exhibits.

10 MS. BORZELLERI: I do. I would like to

11 offer the exhibits into evidence and move they go into

12 evidence. I also would like to offer the jurisdictional

13 packet which has our notice with the proof of the letter

14 confirming the continuance of the agenda item,

15 establishing the Board's jurisdiction for this matter.

16 ALJ LEVY: Right. So that's a new exhibit.

17 Is that 14 then?

18 MS. BORZELLERI: Yes.

19 (Exhibit 14 marked for identification)

20 ALJ LEVY: Okay. Any objection to 14 being

21 admitted for jurisdictional purposes? Mr. Yates?

22 MR. YATES: I'm sorry, your Honor.

23 ALJ LEVY: Any objection to 14 being

24 admitted for jurisdictional purposes only?

25 MR. YATES: Not at all.

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1 ALJ LEVY: Okay. 14 is admitted. Any
2 objections to Exhibits 1 through 13?

3 MR. YATES: None.

4 ALJ LEVY: 1 through 13 are admitted. Do
5 you want to offer your exhibits?

6 MR. YATES: Yes.

7 ALJ LEVY: Okay. Any objections to -- do
8 you want to take them one at a time or all together?

9 MS. BORZELLERI: Yes. Let's take them one
10 at a time.

11 ALJ LEVY: A.

12 MS. BORZELLERI: Objection.

13 ALJ LEVY: What is your objection?

14 MS. BORZELLERI: Actually, you had ruled on
15 A and B --

16 ALJ LEVY: You're right.

17 MS. BORZELLERI: -- as being irrelevant
18 because they related to the plastic trash bag program.

19 ALJ LEVY: Okay. We'll stick with that
20 ruling then, and C is the plastic containers.

21 MS. BORZELLERI: I have no objection to the
22 containers as long as they're not offered for, as your
23 Honor stated, the truth of the assertion that the mark on
24 the bottom is in fact the container manufacturer.

25 ALJ LEVY: Right. Okay. They will be

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1 admitted with that limitation. D.

2 MS. BORZELLERI: Which was D again?

3 ALJ LEVY: I already stated that we'll take
4 official notice of all code sections, so that was the code
5 section.

6 MS. BORZELLERI: No problem.

7 ALJ LEVY: E is the January 21st, 2000
8 letter.

9 MS. BORZELLERI: No objection.

10 ALJ LEVY: Okay. E is admitted. F is the
11 January 13th letter.

12 MS. BORZELLERI: Oh, no objection.

13 ALJ LEVY: Okay. It's admitted. And then
14 G is the January 20th, 2000 letter.

15 MS. BORZELLERI: January 21st? Yes. No
16 objection.

17 ALJ LEVY: No. It's the 20th. There was
18 another one on the 20th.

19 MS. BORZELLERI: I don't seem to have a
20 copy of that.

21 ALJ LEVY: That's from you to Mr. Yates.

22 MS. BORZELLERI: Oh, no objection.

23 (Laughter)

24 ALJ LEVY: All right. Closing arguments.

25 MS. BORZELLERI: I will make this brief.

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1 Is this microphone on?

2 Just in closing I would like to remind the
3 Board that the Board is the trier of fact in this
4 situation. Your obligation is to apply the laws as they
5 exist today. The question is do the facts establish that
6 Chemlite violated the law. The law is that as it was
7 established in 1991 and required all product manufacturers
8 to come in compliance in 1995, as product manufacturers
9 should have known, a product manufacturer is the entity
10 responsible for compliance, not the container
11 manufacturer. The entity that -- also the entity by
12 Mr. Yates's own admission who can specify how that
13 container should be, whether it contains post-consumer
14 rein, virgin resin.

15 Product manufacturer includes distributor
16 who holds itself out as the entity responsible for the
17 product. Products that are exempt include hazardous
18 materials, pesticides, foods and cosmetics. We have no
19 evidence that the products that Mr. Yates distributes or
20 Chemlite distributed actually fall within that exemption.

21 The State has shown that Chemlite was a
22 product manufacturer as defined in statutes and
23 regulations. Chemlite's name is the only name on the
24 label and holds itself out as the manufacturer.

25 We therefore respectfully request the Board

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1 rule in favor of the State. Thank you.

2 ALJ LEVY: Mr. Roberti has a question of
3 you.

4 BOARD MEMBER ROBERTI: You say you were
5 asking for a \$50,000 penalty. What is the basis of
6 reaching that figure?

7 MS. BORZELLERI: Well, the penalty criteria
8 that the Board had established, staff had done an analysis
9 based on the good faith efforts, the willingness to
10 comply, and several other factors. And it appeared that
11 Chemlite Industries was totally opposed to complying with
12 the law and seemed extremely uncooperative and, therefore,
13 staff had recommended the full \$50,000 penalty.

14 BOARD MEMBER ROBERTI: What is our
15 discretion?

16 MS. BORZELLERI: The Board can assess up to
17 \$50,000 per violation.

18 BOARD MEMBER ROBERTI: How many violations
19 again are we --

20 MS. BORZELLERI: There is one violation
21 that we're charging.

22 BOARD MEMBER ROBERTI: One violation which
23 again is?

24 MS. BORZELLERI: Failure to submit the
25 certifications required.

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1 BOARD MEMBER ROBERTI: What year?

2 MS. BORZELLERI: For compliance year 1996.

3 BOARD MEMBER ROBERTI: And we can assess --
4 have we ever assessed in the past upon a violation?

5 MS. BORZELLERI: No, we have not.

6 BOARD MEMBER ROBERTI: So this is the first
7 instance?

8 MS. BORZELLERI: Yes.

9 ALJ LEVY: Closing argument, Mr. Yates.

10 MR. YATES: I think I actually closed the
11 argument before, your Honor, to tell you the truth.

12 ALJ LEVY: That's fine.

13 MR. YATES: I've said enough about the
14 manufacturing and distributor angle, but I just want to
15 say that this has been quite an experience today. It's
16 been a long time since I've been this long on a podium and
17 people were actually listening to me. I couldn't believe
18 it.

19 Anyway, thank you very much. I'm happy to
20 have been able to state our case, but I would want to say
21 one other thing relative to the very last commentary made
22 by Mr. Roberti and Ms. Borzelleri. There's only one
23 reason that Chemlite Industries, which was headed up by me
24 at the time, did not file certification forms was because
25 if we did, because of having no information, we would have

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1 opened ourselves to perjury and I'm not going to do that.

2 That's my argument. Thank you.

3 ALJ LEVY: All right. Thank you. The
4 matter is submitted and the Board will meet in executive
5 session, and are you going to come back and announce a
6 decision today?

7 CHAIRMAN EATON: Yes.

8 ALJ LEVY: Okay. The Board, after reaching
9 its decision, will come back and announce it, if you want
10 to stay around for that. And do you want to say something
11 about the rest of your agenda?

12 CHAIRMAN EATON: Upon completion of this
13 item, we'll go immediately into the Lionudakis matter.

14 BOARD MEMBER ROBERTI: Mr. Chairman.

15 CHAIRMAN EATON: Senator Roberti. I'm
16 sorry.

17 BOARD MEMBER ROBERTI: Before I forget
18 coming back from our recess, I have an ex parte. As you
19 know, I wasn't here for the bulk of the RPPC so I looked
20 at my E-mail and I got -- so I do have to disclose an ex
21 parte from Mr. Robert L. Nelson in opposition to the
22 permit -- concern over the permit on the Lionudakis which
23 I would like to place in the record.

24 CHAIRMAN EATON: Okay.

25 (Brief recess taken)

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1 ALJ LEVY: All right. We'll come back to
2 order here. The Chairman is going to announce the
3 decision of the Board.

4 Mr. Eaton.

5 CHAIRMAN EATON: In the matter of
6 California Integrated Waste Management Board versus
7 Chemlite, the Board unanimously finds that Chemlite is in
8 violation of the one count as identified by the State and
9 that we assess a fine of \$20,000. Thank you very, very
10 much.

11 Next item will be Item, I believe, Number
12 24, and I would ask because it is -- the hour is late and
13 people do have to get home, that what I would like to be
14 able to do is to allow 15 minutes of time for the
15 proponents of the project and 15 minutes of time in
16 opposition due to the fact that a number of the issues
17 have been already previously brought to the Board's
18 attention and, therefore, in order to be able to move
19 through it and not be redundant, we would like to be able
20 to keep the time.

21 So if you could identify spokespersons who
22 would represent particular types of issues, whether they
23 be odor issues, site issues, groundwater, whatever it
24 might be, rather than be redundant, I think that would be
25 helpful.

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1 There are a number of other people who are
2 from out of town who share your same predicament and need
3 to get home as well to their families later on in the
4 agenda, and so we will move from there.

5 Ms. Nauman, please begin.

6 MS. NAUMAN: Mr. Chairman and Members,
7 Julie Nauman, Deputy Director, Permitting and Enforcement
8 Division.

9 This item, Item Number 24 on your agenda,
10 is consideration of a new Solid Waste Facility Permit for
11 Lionudakis Wood and Green Waste Recycling Compost
12 facility. Jon Whitehill of the P and I staff will be
13 making the presentation for staff.

14 MR. WHITEHILL: Good evening, Chairman and
15 Board Members. Lionudakis currently operates a compost
16 facility under the conditions of a registration permit
17 which allows composting of 10,000 cubic yards of green
18 material. The operator wishes to obtain a new permit to
19 increase the volume of material on-site to 50,000 cubic
20 yards.

21 The facility is located in Sacramento
22 County about four miles southeast of our offices near the
23 intersections of Jackson Road and Mayhew Road. The
24 compost processing area is 30 feet below grade in a former
25 gravel quarry. Although adjacent land use is zoned

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1 agricultural or industrial, there are several residences
2 within a half mile of the site. One neighborhood of eight
3 homes is approximately one quarter mile west of the
4 facility boundary on Newton Drive near Fruitridge Road.
5 Also, the Rosemont and Beazer Homes are one mile to the
6 north.

7 Composting is the controlled decomposition
8 of organic material such as leaves, twigs and grass, and
9 compost is the viable soil product that results from
10 proper composting. The operator uses the windrow method
11 for composting municipal yard waste such as grass
12 clippings, tree trimmings and leaves.

13 This facility is not open to the general
14 public. Most material is collected and delivered by
15 county vehicles as part of the County's curbside green
16 waste collection program which picks up cans of yard
17 trimmings from county residents every other week. The
18 yard waste is tipped on a concrete pad where it is checked
19 for contaminants before being ground and placed into long
20 piles or windrows.

21 During the decomposition process, which can
22 take up to 100 days, the operator monitors temperature,
23 moisture and other parameters. The material is also
24 periodically turned and mixed to maintain oxygen levels to
25 ensure that the material decomposes in a manner that

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1 minimizes objectionable odors.

2 The Sacramento Environmental Management
3 Department as the Local Enforcement Agency, or LEA, will
4 be responsible for inspecting the facility, responding to
5 complaints and issuing and enforcing the permit. The LEA
6 issued the original composting registration permit for
7 this facility in July of last year. The registration
8 permit allows a maximum of 10,000 cubic yards of material
9 on-site at any one time. A registration permit, however,
10 does not require Board concurrence but was issued by the
11 LEA once the application was deemed complete.

12 Compost sites of this type qualify for a
13 standardized permit if they take any amount over 100,000
14 cubic yards. Therefore, the operator eventually applied
15 for a standardized permit that would have allowed 100,000
16 cubic yards of compost on-site, and that was in order to
17 accommodate the County's entire amounts of curbside
18 collected yard waste. However, state regulations do not
19 allow local agencies to add site-specific terms and
20 conditions to a standardized permit. The Board considered
21 the proposed standardized permit on September 22nd of last
22 year, and after two hours of public testimony, the
23 operator and the LEA agreed to continue the hearing to a
24 future Board meeting.

25 Although not required of compost facilities

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1 of this type, the LEA and the operator eventually came to
2 a mutual agreement to process a full permit. In this case
3 the LEA is allowed to add site-specific terms and
4 conditions to a full permit, and on December 20th the LEA
5 submitted the new permit which contains conditions that
6 address public concerns raised at the Board's September
7 hearing. The new permit also reduces the proposed project
8 from 100,000 cubic yards to 74,000 cubic yards of compost.

9 Eventually on January 10th, the LEA amended
10 the new permit to reflect the County Environmental Review
11 Department's January 4th interpretation of the CEQA
12 document. The amended permit reduces the compost windrow
13 area again from 30 to 10 acres and reduces the permitted
14 volume of compost material on-site to 50,000 cubic yards.
15 The January 10th version of the permit was made available
16 for review on the Board's web site. The LEA has since
17 added three more conditions to the permit, bringing the
18 total to 38 conditions. The LEA will go over the three
19 new conditions in a moment.

20 In September when the permit was continued
21 to a future Board meeting, there were three outstanding
22 issues. The first was conformance with the Integrated
23 Waste Management Plan; the second was compliance with the
24 California Environmental Quality Act; and the third was
25 consistency with the state minimum standards for compost

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1 facilities.

2 Regarding the Integrated Waste Management
3 Plan, the Board approved Sacramento County's Integrated
4 Waste Management Plan in 1998. The proposed project was
5 described at that time as the Good Earth Brand Soil
6 Center. The Non-Disposal Facility Element and the
7 proposed permit use different units of measurement so,
8 therefore, the Board's Office of Local Assistance was
9 unable to make a finding that the permit was consistent
10 with their Integrated Waste Management Plan. However, the
11 new permit now restricts incoming material to a maximum of
12 350 tons a day which is consistent with the NDFE's
13 description.

14 Regarding the California Environmental
15 Quality Act, or CEQA, the County of Sacramento prepared an
16 initial study for the project in 1996 and the County
17 accepted the Negative Declaration and adopted the project
18 at a public hearing in July of 1996. Some nearby
19 residents of the project have complained that they were
20 not notified that this facility was being proposed in the
21 area and that they did not get a chance to comment on the
22 CEQA document during the 1996 process. It is my
23 understanding that the County Planning Department,
24 however, did notify property owners within 500 feet of the
25 facility, but one of the neighborhoods where the LEA has

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1 received odor complaints is located approximately 1,200
2 feet west of the facility. However, the County seems to
3 have complied with the minimum notification requirements
4 of CEQA.

5 In October of last year, the LEA received
6 public comments on the adequacy and consistency of the
7 CEQA document alleging that the 1996 CEQA document is
8 outdated and does not reflect existing conditions. In
9 summary, the letter states that the size of the compost
10 area has changed, that the CEQA document did not take into
11 account nearby residents, and that the recent odor
12 complaints demonstrate that the mitigation measures were
13 not adequate.

14 The Sacramento County Department of
15 Environmental Review and Assessment has since submitted to
16 the LEA on January 4th a response to the above
17 allegations. The Environmental Review and Assessment
18 Department agrees that the compost windrow area should be
19 limited to 10 acres but upholds that the 1996 initial
20 study for the Negative Declaration did properly address
21 the potential for anticipated off-site impacts. As
22 mentioned earlier, the LEA has since revised the proposed
23 permit to reflect this determination, and the Sacramento
24 County Council is here to answer questions you may have on
25 that determination.

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1 Third, regarding state minimum standards,
2 operators of compost facilities are required to ensure
3 that all composting activities are conducted in a manner
4 that minimizes odor impacts. The LEA received seven odor
5 complaints between August 9th and 19th of last year, and
6 the LEA was able to confirm that all seven complaints were
7 a result of one large stockpile of green waste which had
8 been stored too long at the compost facility before being
9 processed into the windrows.

10 Also at the Board's September 22nd hearing
11 last year, 25 people presented their concerns about the
12 expansion of the facility, complaining of odors at that
13 time and asking that the Board deny the permit. And since
14 the September 22nd meeting, the LEA has received more than
15 400 additional odor complaints from 74 individuals. Those
16 complaints are shown on page 4 of the staff report, and
17 the locations of the neighborhoods are shown on the map on
18 page 6 of the staff report.

19 The LEA was able to verify many of those
20 complaints and issued an enforcement order in mid-October.
21 By mid-November of last year, most of the compost had been
22 removed from the site, and incoming yard waste was being
23 transferred to an out-of-county site. Starting on
24 December 3rd of last year, the operator started building
25 seven windrows which now exist on-site. Also since

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1 September of last year, the operator has incorporated many
2 new odor minimization measures into the design and
3 operation of the facility, and page 7 of the staff report
4 describes the site odor control measures.

5 The LEA has diligently followed up on all
6 odor complaints, recording and mapping each complaint and
7 inspecting the site to make sure that the operator is
8 responding to complaints and making improvements in
9 operations as necessary. Again as I mentioned earlier,
10 the standards state that all composting activities shall
11 be conducted in a manner that minimizes odor and nuisance
12 impacts, and because of recent improvements at the site,
13 staff believes that the operator can now meet this
14 standard.

15 In summary, the LEA and Board staff have
16 reviewed the proposed permit and documentation and made
17 the following findings: First, that the lead agency has
18 verified that they complied with the requirements of the
19 California Environmental Quality Act and that the proposed
20 permit is consistent with the adopted Negative
21 Declaration; second, that the design and operation is
22 currently in compliance with state minimum standards for
23 compost operations in facilities; third, that the facility
24 is consistent with the intent of the County's Integrated
25 Waste Management Plan; and fourth, that the permit is

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1 consistent with standards adopted by the Board.

2 Staff have reviewed the proposed permit and
3 supporting documentation and found them to be acceptable
4 at this time. The operator has made improvements in
5 response to LEA and neighborhood input, and the LEA has a
6 plan to taken enforcement action if necessary.

7 Therefore, staff recommend that the Board
8 adopt Resolution Number 2000-40, concurring in the
9 issuance of Solid Waste Facility Permit Number 34-AA-0200.

10 Jim Cermak and Terry Kociemba representing
11 the LEA are here to answer questions, and so are
12 representatives of the operator and I believe members of
13 the public also.

14 CHAIRMAN EATON: Any questions of staff or
15 the LEA or Counsel? Mr. Cermak, did you want to say
16 something?

17 MR. CERMAK: For the record, Jim Cermak,
18 Sacramento County LEA. Mr. Whitehill indicated that -- it
19 may not have gotten into your package -- but three
20 additional conditions have been added to the permit. If
21 you would turn to the last page of the permit, 17,
22 conditions number 35 -- and these conditions were added at
23 the request of the operator. Condition number 35 states
24 that the operator shall cooperate with the LEA in the
25 preparation of a status report on site operations. The

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1 report shall be submitted to your Board by July 15th,
2 2000.

3 36 indicates that the operator shall
4 conduct site operations as outlined in LEA Advisory Number
5 6, and the operations shall include the following on-site
6 activities: Windrows in an aerobic condition, moisture
7 content between 45 and 60 percent, adequate windrow
8 temperatures, controlling dust through water application,
9 windrows not being turned during high wind conditions, and
10 issuing protective equipment to personnel.

11 Condition 37 indicates that the operator
12 shall comply with all new state regulations that may
13 result from a Waste Board study of bioaerosol health risk
14 associated with composting facilities.

15 I'd also like to make brief opening
16 remarks. Just to put it in perspective, we were before
17 your Board in September, and after much testimony, issues
18 arose. And our direction from your Board was to ask the
19 operator to waive time, which he did, and the LEA
20 concurred in that. Our direction was to allow time for
21 your Board Members to visit the site to have a firsthand
22 knowledge of the site, which I believe all the Board
23 Members did have an opportunity to do. It would allow the
24 LEA to verify odor complaints that had come up at that
25 Board meeting, and it would also allow the operator to

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1 demonstrate any additional improvements he could make to
2 the site.

3 After all this what we did is we sat down
4 with Waste Board staff, with the operator and our staff
5 and tried to figure out what's a rational approach to
6 address the issue of odor. Odor is something,
7 unfortunately, you can't go out there with the meter and
8 take a reading and there's a standard and you say it's a
9 problem. So how best to approach this. What's the
10 rational approach from the LEA standpoint and also from
11 the operator's standpoint and also from the citizens'
12 standpoint.

13 Number one, we must be responsive to
14 complaints which means that we have to consider every
15 complaint as valid. Somebody is making a complaint,
16 they're probably making it for some kind of reason.
17 That's the first thing, be responsive to complaints.
18 We've set up a hotline where people can call in and we've
19 also developed somewhat of a guidance document as to how
20 we're going to respond to complaints. Complaint response
21 has to be timely and effective.

22 Secondly, if there is a complaint, what you
23 need to do is trace it back to the origin, and in this
24 case what it would mean is we want to go back to the site,
25 if it's coming from that site, to ensure that the site is

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1 operating using best management practices because I think
2 we all have to keep in perspective the fact that the law
3 says an operator is to do -- is to operate in a manner
4 that minimizes complaints. I think everybody has to
5 recognize that there are going to be certain times where
6 you're going to get some complaints, but if the operator
7 is operating that site using best management practices,
8 then I think that's what the LEA has to confirm.

9 Thirdly, we looked at it and said you know,
10 rather than going for the full amount as initially was
11 proposed, maybe it would be more appropriate to have
12 future entitlements based on performance, so you'll see
13 that reflected in the permit. So future entitlements will
14 be based on is the operator using best available best
15 management practices to operate this site. And the way to
16 do this, it was determined, is to require a full Solid
17 Waste Facility Permit. The permit that was before you in
18 September did not allow the LEA to put any conditions on
19 that permit. Right now before you is a full Solid Waste
20 Facility Permit which allows us as an LEA to condition
21 this.

22 There are 38 conditions on the permit
23 before you. 17 of these conditions deal either directly
24 or indirectly with the issue of odor. There's also
25 capacity limitations on this permit. This operator would

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1 not be allowed to move up to the next amount of cubic
2 yardage if he is not able to demonstrate that he can
3 operate the site using best management practices.

4 We've also agreed and put it in as a
5 condition that we will present you a status report in July
6 indicating what has transpired if we're successful in
7 getting your concurrence in this permit.

8 Then the last item is timely consequences
9 for violations, which is part of the equation also. We
10 are fully prepared -- if this operator is not in
11 compliance and doesn't choose to come into compliance, we
12 are fully prepared to go forward to either suspend or
13 revoke the permit using the appropriate procedure.

14 With that, we would request that your Board
15 concur in the issuance of this permit, and I will be
16 available to answer questions. The operator has folks
17 available. We also have our legal staff available should
18 there be any legal questions.

19 Thank you.

20 CHAIRMAN EATON: Thank you, Mr. Cermak.
21 Any questions of Mr. Cermak? Okay. Does the operator or
22 proponent wish to make any statements before we go to the
23 opposition?

24 MR. TAYLOR: John Taylor on behalf of the
25 Lionudakis organization. I think in light of the very

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1 thorough presentation which has been made by Mr. Whitehill
2 and Mr. Cermak, I will be very brief.

3 We're pleased to be here tonight.

4 Obviously the presentation which you've had from the staff
5 members indicates the enormous amount of work which
6 (inaudible) on September 22nd when this matter was last
7 before you and that it comes before you this evening.

8 Let me note that the request has two
9 different aspects to it. We've had some discussion about
10 this already. First of all, the permit is now a request
11 for a full permit. The reason for that, as Mr. Cermak
12 indicated, is to assure that appropriate conditioning can
13 and will take place. The second change is from a request
14 for 100,000 cubic yards to a maximum of 50,000 cubic
15 yards.

16 The location of the site, I think you're
17 well aware of where it's located, the general vicinity and
18 the neighborhood. Let me tell you. We've brought with us
19 this evening zoning maps in case there's any questions
20 with respect to the surrounding zone in the area. We have
21 those maps as well as the Sacramento County Zoning Code to
22 reference those local land use issues. Also, as reference
23 has been made, we do in fact have a use permit which was
24 issued by Sacramento County in 1996.

25 Let me add just a few comments about what

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1 we have done since September 22nd when we were last before
2 you. First of all -- and this matter is referenced in the
3 staff report but has not been orally brought before you --
4 and that is the matter of having neighborhood meetings.

5 We had four of those meetings -- September 14th, October
6 14th, October 21st, and October 27th. On four occasions
7 we met with and listened very carefully to the neighbors.

8 We hired an odor specialist, Ray Capinga
9 (phonetic), who has come up with a series of measures
10 which we have added to the site. And I guess most
11 important is the corrective measures which we've taken to
12 deal with the odor issue. A few of the matters which have
13 been done is the processing, and there's a condition to
14 this effect, will occur within 48 hours after the arrival
15 of the material on the site. Second of all, spraying of
16 material will occur with Bioscent, which is a natural
17 deodorizer, when the material arrives. The windrows have
18 been or are required to be turned on a daily basis. We've
19 added wood chips -- and this matter hasn't been discussed
20 at length -- but wood chips to add additional carbon into
21 the material, again to deal with the odor issue. And I
22 guess most important in terms of cost at least is we've
23 installed a perimeter misting system around the entire
24 site which is designed through a misting process to keep
25 the odors confined to the premises.

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1 Now, there's been a lot which has gone on
2 here. Let me simply indicate to you that the measures
3 which I've talked about here have collectively cost in
4 excess of one-third of a million dollars to implement. So
5 not only did we talk about it and listen, but we actually
6 responded and have put a great deal of money out in the
7 process of doing so.

8 I think -- and on page 24-6 of your staff
9 report there is a list of complaints or a graph. I
10 understand the LEA has here this evening one which brings
11 it right up to date, and you can see there has been a
12 substantial decrease in those complaints to where they are
13 virtually nonexistent at this point in time.

14 There was one complaint noted -- there are
15 a series of complaints in December which stemmed from a
16 hot load that arrived. I believe that shows as December
17 the 16th. That matter was taken care of within a handful
18 of hours.

19 Last, let me take just a few moments to
20 talk about some of the conditions. Mr. Cermak referenced
21 that there are 38 of those conditions, and I want to talk
22 about just a few of those. First, and I guess most
23 important, is that there is a ratchet-up system, which has
24 been talked about briefly but let me describe it in
25 detail. Under the permit, we would be allowed to go to

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1 30,000 cubic yards upon the issuance of this permit, and
2 then before we went further to the full 50,000, that could
3 not occur before April 27th of the year 2000 and only then
4 after LEA review and the community outreach meeting.

5 Now, the permit itself provides -- let me
6 quote this -- the above-noted volumes, that ratcheting up,
7 shall be increased upon successful completion of previous
8 volume increments. Successful completion is to be
9 determined by the LEA and most importantly, should
10 facility operations create a public nuisance, permitted
11 volumes may be reduced or next scheduled tiered step may
12 be postponed per LEA decision.

13 That's a rather substantial condition. It
14 has an awful lot of bite to it. That condition, let me
15 tell why you it was suggested and why it was included, is
16 to deal with the fact that the warm weather has not yet
17 returned and we've had less material on the site,
18 currently about 4,000 cubic yards of material on the site,
19 and the fact that the weather has not been warm. So we
20 wanted to have a means by which it would be reviewed and
21 ratchet it up if appropriate when the weather turned warm
22 for further review. It's a checkpoint to make sure that
23 when the warm weather returns that, in fact, things are
24 operating appropriately.

25 In addition -- and reference was made to

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1 this -- there is a provision for report back to this Board
2 in July which we, as the operator, are required to help
3 with the preparation, supply information for. That would
4 occur in July, again as a checkpoint for when the weather
5 turns warm.

6 Conditions 6 and 8 of the LEA permit allow
7 the LEA to suspend or modify the permit at any point in
8 time. Again, an awful lot of bite. Condition 26 requires
9 the 48-hour turnaround I talked about a few moments ago.
10 Condition 33 provides there shall be no expansion of the
11 operation unless additional environmental review is
12 undertaken, and that's to keep it within the confines of
13 what was analyzed in the Negative Declaration by
14 Sacramento County.

15 Condition 35 requires the operator to
16 cooperate in the preparation of the study I mentioned a
17 few moments ago to come back to this Board in July. And
18 Condition 36 provides very detailed standards to deal with
19 the bioaerosols issue.

20 I think with that I would simply note we've
21 worked long and hard with the LEA and with your staff,
22 that we believe that we've come up with a program which
23 has real meat to it. Conditions, 38 of which there are,
24 will assure that the matter -- the facility is conducted
25 in a responsible fashion. With that we would, like the

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1 staff, encourage approval of the requested permit.

2 CHAIRMAN EATON: Thank you. Is there any
3 questions of the operator's representative? Okay. All
4 right. About five after 7:00. I have one speaker slip
5 from Mildred Collier. For the record that's
6 C-o-l-l-i-e-r, who wrote a note that she had to leave due
7 to darkness but she wanted to make sure the record would
8 reflect she was opposed. So if we could have the record
9 reflect that.

10 First up, Miguel A. Vasquez and Maria Luisa
11 Montiacca. I may have mispronounced it and I apologize.
12 Before you begin, not to cut you off, the Board is very
13 much interested in your comments, but we are also
14 interested in the comments that pertain to this permit
15 from the last time we met. I think to go over the other
16 issues, the permit has changed substantially, the
17 conditions have changed substantially. If you have
18 information that's new, that's what we're looking for. It
19 would greatly be appreciated if you could sort of comply
20 with that.

21 Thank you.

22 MS. MONTIACA: Thank you very much,
23 Chairman, Commissioners. My name is Maria Luisa Montiacca.
24 My husband, Miguel Vasquez, we live within the quarter of
25 a mile that was referenced earlier.

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1 Just a couple of points that I would like
2 to make that I think are very relevant to the particular
3 proposal before you. The first one relates to the public
4 nuisance language in the proposal itself. In terms of due
5 process, you will note that staff has proposed that the
6 language says should the facility operations permitted
7 create a public nuisance, volumes may be reduced.

8 The question that I would ask for you to
9 ask your staff is how that determination of public
10 nuisance will be made. At one of the public hearings that
11 were held and hosted by Mr. Lionudakis, by the LEA's own
12 response with respect to a question posed about how a
13 public nuisance is determined, by their own response this
14 is an issue that would have to be handled by the legal
15 staff. So this -- which means it may involve protracted
16 litigation, and it's really not a satisfactory process to
17 the property owners.

18 I guess what I would ask, that if you're
19 going to consider this proposal seriously, which of course
20 we don't want to you, we want to you reject the proposal,
21 we feel that in your language there should be a clear
22 indication that it is the LEA that can make this
23 evaluation and be able then to reduce or postpone the
24 volumes, because what you're doing otherwise is basically
25 you're telling us that the volume may be increased per LEA

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1 evaluation but it cannot be decreased unless a
2 determination that a public nuisance has occurred.

3 Now, if LEA can make that determination,
4 well, that's easier for us as homeowners because we can
5 work with LEA, we can file those complaints, we can ask
6 them to request action based on your own process; but if
7 they can't do that, it really is unfair to the homeowners
8 because what you're basically telling us is saying go to
9 the courts. They can go up in volume, but they can't go
10 down in volume. That's the first point.

11 As far as your proposed resolution, which
12 we had an opportunity to look at just briefly as revised
13 January 21st, I would ask you that with respect to any
14 findings relative to the County 1996 application, you
15 don't include that language. As indicated, one of the
16 provisions there indicates that on January 4th of this
17 year determination was made by the County that the
18 property addressed the potential for anticipated off-site
19 impacts. Well, that may be the County's view, but truly
20 we, as homeowners, have not had an opportunity to
21 challenge that determination. So I think it's premature
22 for you to accept that as a statement of fact or as a
23 statement of intent that the particular element
24 requirements have been satisfied.

25 We have been trying to work with the County

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1 to try to get response to that issue. They have made an
2 initial determination, but there are due process issues
3 there. And I guess what I'm saying, if you're going to go
4 with that, ensure that that process has not been exhausted
5 before you put on your resolution that everything was
6 properly done by the County. Okay.

7 Those are the two points that I think would
8 be helpful. Again, we have a letter that we submitted
9 where we have a log from the time period of September 21st
10 to October, approximately a three-week period. My
11 children locked in whenever they smell. You can see
12 reviewing the log itself that it's quite intolerable, and
13 although we understand the complaints are minimal at this
14 point, this is not the time where there's a high volume.
15 It has impacted our lives, our health, the water we drink,
16 and we urge for you to reject the proposal in its
17 entirety.

18 Thank you.

19 CHAIRMAN EATON: Thank you. Mr. Vasquez,
20 anything?

21 MR. VASQUEZ: Yes, I just want to reiterate
22 a couple of the points there. And of course, you can
23 still smell the odor, even in the winter. We live close
24 enough to where every morning it's there and every evening
25 it's there. Of course, during the summer it's quite

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1 different. You won't go outside.

2 I'm concerned about the water
3 contamination. Everybody in my neighborhood is on a well
4 system, and I know at this point that is one of the least
5 concerns, but all this water that goes to this compost is
6 leeching through the soil and winding up somewhere. So I
7 can only see that it's just a matter of time before we can
8 find out whether we have problems with our water or not,
9 even the water table level because from what I understand,
10 also they have drilled a couple of new wells using the
11 water.

12 That's all.

13 CHAIRMAN EATON: Thank you. Senator
14 Roberti.

15 BOARD MEMBER ROBERTI: Mrs. Montiacca, the
16 previous speaker, seemed to indicate that the complaints
17 cannot go to the LEA if noxious aspects of the composting
18 facility seem to be on the increase, like I guess odors --
19 maybe I misheard her -- and, therefore, the LEA couldn't
20 decrease the amount. Is my interpretation of what she
21 said correct or is what she said correct or what?

22 MR. WHITEHILL: I'll let the LEA who wrote
23 that answer that question.

24 MR. CERMAK: Okay. It was my understanding
25 her concern was that if there's a problem, an odor

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1 problem, that the LEA could not go in there and reduce the
2 amount; but conversely, if they're operating okay, the LEA
3 could go in there or would be allowed to increase the
4 amount. What I really heard was if there's a public
5 nuisance, is there really something that the LEA can do
6 about this, and she also mentioned due process and court.

7 In response to that, to us a public
8 nuisance is a number of people complaining. And as was
9 stated earlier, we will respond to complaints. We will
10 determine the origin of the complaints. We will see if
11 the operator is -- if the operator is doing something to
12 cause the odor, and we would at that time ask -- or not
13 ask, but direct the operator to correct what they're
14 doing, which hopefully would solve the problem.

15 If the operator is not cooperative, then we
16 would move it up to the next step, give him a notice, an
17 order, which we're required to do by due process of the
18 law so we could proceed with the court. And I think we
19 all understand that we don't have the authority as an LEA
20 unless there is a serious health violation out there to go
21 to the operator and tell them you have to shut down. And
22 even if we do go -- we all have to understand this. If we
23 go to an operator and give the operator direction to shut
24 down and they disregard that, then there's the due
25 process. That can be appealed, et cetera.

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1 So all I can say is we feel we're a
2 responsible LEA. We will respond to complaints. We will
3 try to figure out what's causing the complaints and
4 whether the operator is doing something to create the
5 odors.

6 MS. TOBIAS: Mr. Chairman, may I respond?

7 BOARD MEMBER PENNINGTON: I'm not sure he
8 answered the question, though. The matter is can the LEA
9 lower the amount of material going in if they determine
10 there is a public nuisance there. I think that's the
11 question.

12 MS. MONTIACA: Yes, that's the question.

13 MR. WHITEHILL: And another way to answer
14 that maybe would be that the way I read the permit --

15 BOARD MEMBER PENNINGTON: The best way to
16 answer it would be "yes" or "no".

17 MR. WHITEHILL: The LEA does --

18 BOARD MEMBER JONES: Well, wait a second.
19 Let him answer.

20 CHAIRMAN EATON: One at a time.

21 MR. WHITEHILL: The LEA, the way I read
22 this permit, does have the authority to direct the
23 operator to reduce the tonnage or shut down or take
24 whatever enforcement action they deem is appropriate.

25 However, as Mr. Cermak mentioned, that all

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1 enforcement orders are appealable to a hearing panel. So
2 there is the due process part of it that --

3 BOARD MEMBER PENNINGTON: Right. I
4 understand that.

5 MR. CERMAK: Perhaps this will help also.
6 There's a condition in there that says if there's odors
7 that are generated and they're caused by something, the
8 operator, we can demand the operator stop taking in
9 feedstock; that if there's material on that site that has
10 gone anaerobic, which is generally the cause of odors, to
11 remove that in an expeditious manner.

12 MS. MONTIACA: Yes. I appreciate the
13 comments. As was noted, though, there are 38 conditions
14 so it's also a subjective call as to at what point there
15 is sufficient number of violations to constitute a public
16 nuisance. As homeowners, the clearer that is, the better
17 we all are.

18 I suppose that if you were to consider this
19 proposal, if you could live or LEA could live with this
20 revision as I'm going to read it to you, I think it would
21 be a lot clearer, at least a lot fairer to the public.
22 I'm not sure that they could, but if you'll bear with me.
23 This comes from the first page of your permit application
24 in the paragraph that starts, "The above-noted". If it
25 read, "Should the facility operations create a public

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1 nuisance, per LEA evaluation, permitted volumes may be
2 reduced or next scheduled tiered step may be postponed by
3 the LEA." It would make it clearer that the LEA has the
4 authority. If they do not, then I think this language
5 here is really just a red herring. It appears to indicate
6 that the public would have some recourse based on LEA
7 actions, but really I think it would ultimately be a legal
8 call and it is ambiguous and it is of concern to us.

9 CHAIRMAN EATON: Thank you. Mr. Jones, do
10 you have a comment?

11 BOARD MEMBER JONES: I do have a comment
12 because I think that what Mr. Cermak is talking about is a
13 process that is held statewide for every permitted
14 facility in the state of California, that when issues come
15 in and people are in violation and they continue to
16 violate, you offer a cease and desist and you start the
17 process, and it is -- and I think it's good that it is
18 reiterated the way it is. But to let an LEA change the
19 permitted tonnage going into a facility based on whatever
20 criteria somebody decides makes a lot of sense other than
21 a policy-making Board, which this unit is, doesn't make
22 any sense.

23 I'm looking at -- I believe -- believe me,
24 I've permitted an awful lot of facilities in my life. I
25 believe in the public process. I believe the public has a

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1 right to do everything they can to be involved in the
2 community, to do what they can to make sure that what's in
3 an area works and that you have to notify people.

4 I remember those of you that were here at
5 the last Board meeting. I told you this was what was
6 going to happen if we postponed this thing. But when
7 notices are sent out to everybody that says "protect your
8 property values, call in on these odors and these odors
9 could smell like sour milk, rotten eggs," this and that
10 and the other thing, and then you want to put in the power
11 of the LEA, if you get some of these phone calls, based on
12 whatever campaign, and they can arbitrarily lower a volume
13 of a facility that's been permitted, that's not due
14 process, which is the other side of what everybody in this
15 room is trying to experience, which is due process. I
16 think that we have to keep very clear those conditions.

17 BOARD MEMBER ROBERTI: I'm still a little
18 unclear as to what the LEA can do. If there's a series of
19 complaints, the LEA hears the complaints and judges that
20 they have merit, the LEA will issue an order, I assume, of
21 some sort. What is that -- what can they issue in that
22 order or do they have to go to court? As I heard it, you
23 said the LEA's decision was appealable. That means
24 there's something that you can issue that's going to be
25 appealed. So what is it that you can issue that's

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1 appealed? Cease and desist? Reduction of tonnage? What
2 is it? I understand the operator has the right to appeal
3 and should not be denied that.

4 MR. CERMAK: Any enforcement order that the
5 LEA issues is appealable, which is what the Code says.

6 BOARD MEMBER ROBERTI: Under the purview of
7 your enforcement order, what can you enforce? Cease and
8 desist? Close down? Reduce tonnage? Can you do all of
9 those things?

10 MR. CERMAK: Reduce tonnage I'm not sure
11 about directly, but indirectly we can do it with the
12 conditions. All of the other things you mentioned, yes.

13 BOARD MEMBER ROBERTI: So you can say cease
14 and desist?

15 MR. CERMAK: Yes.

16 BOARD MEMBER ROBERTI: You can say -- I
17 guess that's the main one.

18 MR. CERMAK: We can demand that they take
19 specific corrective --

20 BOARD MEMBER ROBERTI: Specific corrective
21 actions.

22 MR. CERMAK: Which is again outlined in the
23 permit conditions as to what would be expected if there
24 was a problem.

25 BOARD MEMBER ROBERTI: And you are saying

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1 through those specific corrective actions you in effect
2 would have the affect of reducing tonnage.

3 MR. CERMAK: Yes.

4 MR. TAYLOR: If I might just make one other
5 comment. I don't mean to be disorderly in the process,
6 but it's our understanding we can be ratcheted up and we
7 can be ratcheted down as part of the administrative
8 process with the LEA, and the language that was suggested
9 just a few moments ago to us is no more a collaboration of
10 what's already in there. And if that language would be
11 more comfortable to people, we would be perfectly
12 acceptable to have that included. It's again spelling out
13 to us what it is we thought was already intended to be
14 there.

15 BOARD MEMBER ROBERTI: That's something the
16 LEA works out. I guess we can't negotiate that here.

17 CHAIRMAN EATON: Not yet. Perhaps with
18 some new bills coming up next year or the year after we
19 can try and do that, but not right now.

20 BOARD MEMBER ROBERTI: Well, just to say
21 that I was under the impression that they could ratchet
22 down as part of the condition, and it may not be spelled
23 out as Ms. Montiacca would like, but that and along the
24 lines of what the attorney for Lionudakis has indicated, I
25 certainly would like it in the record that it's the

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1 understanding of the Board and it's the understanding of
2 the attorney for Lionudakis, as well as the understanding
3 of the homeowners, that the LEA can ratchet down and that
4 decision is appealable. I certainly want that in the
5 record. It will make me more comfortable and certainly
6 able to vote for it if that's the case, that your hands
7 aren't tied as to what your enforcement powers are.

8 MR. TAYLOR: That language is right in the
9 permit right now on the first page there, third sentence
10 under C. Should facility operations create a public
11 nuisance, permitted volumes may be reduced or next
12 scheduled tier step-up may be postponed.

13 BOARD MEMBER ROBERTI: That's very good.
14 It seems to be clear. It seems to be in line with what
15 Mrs. Montiacca wanted, and I want to say it is an
16 indication the operator is walking the extra mile.

17 MR. TAYLOR: And our understanding there,
18 public nuisance would be determined by the LEA. It is not
19 a judicial determination.

20 CHAIRMAN EATON: Ms. Montiacca, does that
21 seem to -- not to drag you back up here, but you did raise
22 the issue. Is that your understanding as well now based
23 on what we just discussed?

24 MS. MONTIACA: I think the language I
25 suggested earlier, per LEA evaluation, would need to be

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1 added to that. Again, it's an issue of authority, whether
2 they do have the authority. Certainly if it's an
3 improvement, we would appreciate that language. Yes, it
4 would help tremendously because at least at that point it
5 would be clear as to who we would need to appeal
6 initially.

7 BOARD MEMBER ROBERTI: Well, that language
8 is in the permit. Now, I know it's not in your exact
9 language, but that language is in the permit.

10 MS. MONTIACA: Well, it --

11 BOARD MEMBER ROBERTI: That they can reduce
12 the tonnage, in effect.

13 MS. MONTIACA: Well, yes -- I'm sorry.

14 BOARD MEMBER ROBERTI: Roberti.

15 MS. MONTIACA: Board Member, Commissioner,
16 Senator. The clause should facility operations create a
17 public nuisance, and I guess that by itself is what caused
18 concern to me. So if it said per LEA evaluation, it's a
19 clarification that it's an LEA call, not an ambiguous --

20 BOARD MEMBER ROBERTI: We can't negotiate
21 that here. I think that is implied in the --

22 MS. MONTIACA: Yes.

23 BOARD MEMBER ROBERTI: -- in the permit.

24 MS. MONTIACA: And it certainly helps that
25 Mr. Lionudakis's attorney so states.

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1 BOARD MEMBER ROBERTI: He's on the record

2 and --

3 MS. MONTIACA: It helps. Thank you.

4 CHAIRMAN EATON: Okay.

5 BOARD MEMBER JONES: Mr. Chairman, I have a
6 question of our staff on this.

7 CHAIRMAN EATON: Mr. Jones.

8 BOARD MEMBER JONES: And this is a critical
9 question. I don't mean to get us diluted on this point.
10 What they're talking about is the incoming material. The
11 LEA doesn't have the ability to take 30,000 cubic yards,
12 which it would be permitted for, and change that permit
13 distinction. It would be the flow of material coming in
14 until the problem was taken care of; right? Okay. I just
15 want that clear.

16 MS. NAUMAN: It's not changing the permit.

17 BOARD MEMBER JONES: It's a lot more
18 important than just this facility.

19 CHAIRMAN EATON: All right. Does everyone
20 understand what has just taken place in the audience or if
21 anyone has a question on that point to raise their hand so
22 we don't have to be repetitive, would you come up here?
23 Seeing no hands -- yes, ma'am. On this issue.

24 MS. ALTMAN: On this issue.

25 CHAIRMAN EATON: Yes, ma'am. State your

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1 name.

2 MS. ALTMAN: My name is Patricia Altman. I
3 live in the residence just north of that called Rosemont.
4 Since July, I have been continually ill. I'm not normally
5 an ill person, but I do suffer from allergies, and it's
6 kind of one of those things it's not just odor that gets
7 to you, it's the constant having to go through medical
8 treatments as well as having asthma, which I have not had
9 for 20 years since moving from L.A.

10 I just am asking the question of if we are
11 to -- if it's going to be a public nuisance, are we to
12 inundate LEA with so many calls that they just can't stand
13 it? That's my question.

14 CHAIRMAN EATON: Unfortunately, I don't
15 think that's a question that this Board can answer with
16 all due respect. That goes to Mr. Jones's and all of our
17 concern that whether or not those calls are verified or
18 have merit isn't determining a public nuisance. The issue
19 here, as best as I can understand, is the LEA's
20 determination is based upon whether it's one complaint or
21 a hundred. He has the authority to either go up or down,
22 and that was the language that I think that they were
23 discussing and has been agreed upon both by at least one
24 individual from a surrounding homeowner and the
25 representative/attorney for the operator.

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1 BOARD MEMBER ROBERTI: If I could just add,
2 the enforcement in that area is how many complaints, and
3 the legitimacy of the complaints is going to earnestness
4 and responsiveness of your elected officials. That's
5 where that decision is going to lie and that is your job
6 more than ours.

7 MS. ALTMAN: It will be done.

8 CHAIRMAN EATON: I'm sorry?

9 MR. ELSEY: What was the difference between
10 the tonnage that was coming in and reducing the flow that
11 was coming in? I didn't understand that.

12 CHAIRMAN EATON: If the question -- could
13 you just for the record identify your name? We have to do
14 this just as part of the record.

15 MR. ELSEY: My name is Thad Elsey.

16 CHAIRMAN EATON: I was just getting to you.
17 You're next up.

18 MR. ELSEY: Yes, but you asked if there was
19 questions regarding what had just transpired.

20 CHAIRMAN EATON: With regard to the
21 conversation we just had --

22 MR. ELSEY: Right.

23 CHAIRMAN EATON: -- with what the operator
24 agreed to do as well as the LEA along with Ms. Montiacca's
25 issue.

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1 MR. ELSEY: Correct. I -- part of the
2 question that I didn't understand was the fact between the
3 reducing of flow of incoming material and/or the tonnage
4 of the permit. I didn't understand because there was a
5 point made that there was a distinct difference and I
6 didn't understand what that was.

7 CHAIRMAN EATON: Perhaps, Ms. Nauman.

8 MR. DE BIE: Mark DeBie with the Permitting
9 and Inspection Branch. The way I would view the
10 difference is in terms of lowering the permitted amount
11 of, say, 30,000. That would not be something that the LEA
12 could do through an enforcement action. That's granted
13 through the permit. But in terms of reducing the amount
14 that could be on-site at any one time for a period of
15 time, be it short- or long-term, is something that the LEA
16 could effect through this permit, to say for the next six
17 months or whatever it might be you'll only have 10,000
18 on-site until you get something figured out and can
19 respond. But the LEA would not be able through an
20 enforcement action to change the permitted amount to
21 something less for an uncertain time into the future.

22 CHAIRMAN EATON: Mr. Elsey, did you
23 understand that?

24 MR. ELSEY: Not --

25 MR. DE BIE: The LEA could not reduce the

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1 maximum allowed through some other action other than
2 coming back and revising the permit, but they can change
3 how much is on-site up and down, depending on what's
4 happening at the site in terms of nuisance and complaints
5 and that sort of thing.

6 CHAIRMAN EATON: Mr. Elsey, I'll try and
7 I'll be very simplistic and you can tell me. If you were
8 allowed to have five cars on your property and for some
9 reason there was a problem with one of those cars, the
10 permit says you can have five cars, but the LEA may just
11 say even though you're allowed to have five cars on your
12 property, because of what's going on you can only have one
13 car on the property until such time as the issue has been
14 resolved, and then you can go and have the five cars.

15 That's very simplistic, but that's kind of
16 where he was, the double-talk. It wasn't double-talk, but
17 it sort of is the legalese.

18 BOARD MEMBER ROBERTI: Our language.

19 CHAIRMAN EATON: Our language, although
20 Senator Roberti is really working hard to make sure we
21 can -- Mr. Elsey, was that all because I know that you
22 were up next?

23 MR. ELSEY: I just want to go next.

24 CHAIRMAN EATON: You're up.

25 MR. ELSEY: Okay. Good evening, ladies and

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1 gentlemen. My name is Thad Elsey, Junior. I live at
2 Beazer Homes. I'm not speaking on behalf of anyone from
3 Beazer Homes. I'm just a resident. I pay taxes, I vote.
4 My feeling is that -- I apologize for that.

5 My feeling is that I participate in the
6 County's green waste program. I feel a certain amount of
7 responsibility in terms of, you know, paying to do green
8 waste and participating in the program. I never thought
9 at any time that when I purchased a home on my own way at
10 the Beazer development that I was going to be contributing
11 to what I could only describe as a toxic dump.

12 I water my lawn like everyone else. I put
13 chemicals on my lawn, and a certain amount of those
14 chemicals go into the green waste basket and the County
15 comes and picks it up and it has to go somewhere. My
16 feeling is genuinely if there was a way that you can
17 notify me, if I could just be put on the mailing list of
18 the Board's decision tonight and explain to me what the
19 decision was in terms of notification because my main
20 problem here is that I -- when I receive the phone numbers
21 to call and complain, I got -- I ended up -- they ended up
22 transferring me to the sheriff's department.

23 And so I felt very much that my due process
24 has been denied continuously because every time I tried to
25 complain, I was transferred to this area and that area and

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1 wound up being the sheriff's answering machine for --
2 through the County and I just felt like my due process in
3 order to register my complaints had been denied.

4 Those are my only two issues and I will
5 leave quietly. Just that I be notified of the Board's
6 decision and in that notification be given the proper
7 phone numbers for the LEA and for whatever agency that I
8 can contact such as the waste group, their information so
9 I can contact them and actually participate in the next
10 meeting. I realize under the statutes and what I've heard
11 this evening they don't have to do that because I don't
12 live within 500 feet, but there has been an impact on me
13 and my family and I want to be notified and able to
14 participate in future meetings and et cetera regarding
15 this thing here.

16 Thank you.

17 CHAIRMAN EATON: Thank you. All right.

18 Stacy Simonson.

19 MS. SIMONSON: Good evening. My name is
20 Stacy Simonson. I'm a resident of Beazer Homes.

21 I would like to state for the record that
22 the smell is very bothersome. I worked hard to earn my
23 house and very disappointing, but also is that I feel that
24 I'm a taxpayer. I contribute to society and I feel that
25 even though we have to have the green waste, we're all

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1 being subjected to chemicals, the odor, and my piece of
2 mind is at stake not going outside, wondering what I'm
3 inhaling. I don't let my animals go outside because I'm
4 afraid they're going to get something from the air.
5 That's all. I want to voice my opinion.

6 CHAIRMAN EATON: Thank you. Ray Sumara.

7 BOARD MEMBER PENNINGTON: I have a
8 question.

9 CHAIRMAN EATON: Mr. Pennington.

10 BOARD MEMBER PENNINGTON: How long have you
11 lived there?

12 MS. SIMONSON: I have lived there since --
13 it was March of '98.

14 BOARD MEMBER PENNINGTON: Thank you.

15 CHAIRMAN EATON: Ray Sumara.

16 MR. SUMARA: Good evening. My name is
17 Raid Sumara and my name is Ray. I live actually in the
18 Beazer Homes as well. Most of my concerns have been
19 addressed, and the only thing that I would like to
20 reiterate on is actually the legal language that has been
21 used in this permit. And one thing that I wanted to see,
22 if there is a way that we can actually give ourselves the
23 benefit of the time, actually, and wait for the weather to
24 warm up, to see if these programs that have been instated
25 by the operator that really will work. Not

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1 understanding -- being an engineer, actually, not
2 understanding environmental engineering, which was the
3 program that I was going to go to, but anyways --

4 (Laughter)

5 MR. SUMARA: -- not understanding that,
6 these processes, I would like really to test it. In the
7 engineering field you always test and always try to
8 implement mitigations and processes for the worst case and
9 we haven't seen that yet. I would like this Board to
10 consider for the residents, also for the sake of the
11 operator as well in the future, to go and see what might
12 happen in case like the environment and the temperature
13 rises. That's all.

14 CHAIRMAN EATON: And that is one of the
15 conditions, I think 35, that was mentioned, that they do
16 have to come back in July of this year when there is an
17 increase basically in the activity; right? I assume
18 hopefully the rains will stop by May, and that will make
19 all of our lawns grow or whatever else. And then in July
20 there will be sufficient time to make that report back to
21 the Board.

22 MR. SUMARA: Perhaps I misunderstood. Then
23 this evening we're not considering granting a permit or --

24 BOARD MEMBER JONES: We are.

25 CHAIRMAN EATON: The permit is for this

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1 evening, but it's one of the conditions. I'll let
2 Mr. Cermak -- the Board is not in a position to be able to
3 negotiate the conditions. I'll let Mr. Cermak explain
4 that. Okay?

5 MR. CERMAK: Okay. In a sense what we've
6 done here is what you're asking for, is the fact not to
7 grant the operator a full permit that allows him to do
8 everything he would be allowed to do under his use permit.
9 What we're saying is we're going to allow you to do a
10 certain amount, to start out at a much lower amount, to
11 give the LEA a chance to evaluate the operation. And it
12 further states that if the operator doesn't operate with
13 this reduced amount which is going to allow some of the
14 other type of feedstock to come in, if the operator
15 doesn't show that he's capable of handling this, then
16 there would be no further entitlements and he could be
17 wrapped up. So what you're asking to be done is
18 essentially what's part of this permit.

19 MR. SUMARA: Thank you very much.

20 CHAIRMAN EATON: Thank you. Sandra --

21 MS. AMARAL: Amaral.

22 CHAIRMAN EATON: Amaral, I believe.

23 MS. AMARAL: Hi. I'm Sandra Amaral. I've
24 lived on Newton Drive -- we live at the end, growing up
25 there. In 1970, we moved in. We've never had a problem

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1 like this before. I have two brother-in-laws that are
2 currently right now working on a dairy, and I don't know
3 if you guys know what silage is. It's basically the same
4 thing that they're doing with the composting.

5 The composting is like way worse. It's
6 like treated railroad ties. Whatever they treat it with,
7 that's the smell we've got out there. And it's true.
8 Most of us -- well, we don't have central air and heat.
9 We have a swamp cooler in the summer, and at nighttime we
10 let it run. When it's like a hundred degrees, you can't
11 sleep and we wake up and you can't breathe. The whole
12 house is filled with the smell.

13 I don't think it's healthy myself. I don't
14 think we're going to know for another 10 or 20 years, even
15 with our kids, and the treatment that they have going with
16 the water that they're using is going to lower our water
17 table for our wells. And then another 10 or 20 years down
18 the road, who knows who what it's going to do to the water
19 content, the runoff, of what they're putting on. They say
20 it's biodegradable and it's not going to hurt us, but we
21 don't know what it's going to do after it's mixed with the
22 compost.

23 But it's a scary thing. You know. You
24 guys sit in your nice houses. You don't have this in your
25 backyard. We have this in our backyard. I can see this

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1 from my kitchen window, and it's horrible in the
2 summertime. Right now it's not too bad. We've had
3 occasional one or two days that was pretty bad, but it
4 blows away, but it depends on which way the wind blows,
5 too. We get it really strong because it heads to the
6 East, but we get lucky. Sometimes it blows over to
7 Jackson Highway and that's when Rosemont gets hit with the
8 smell.

9 But yeah, they've got to do something
10 because you've got Towel Works. You've got property way
11 out the other direction. I don't know why they choose to
12 put it right on the edge of all these housing
13 developments, and a lot of them are new. It's true that
14 all the pits are empty, but I would rather see the local
15 farmers planting hay or alfalfa or whatever rather than to
16 have this in my backyard.

17 That's all I've got to say.

18 CHAIRMAN EATON: Thank you.

19 (Applause)

20 BOARD MEMBER ROBERTI: Mr. Chairman.

21 CHAIRMAN EATON: Senator Roberti.

22 BOARD MEMBER ROBERTI: I don't want to
23 make -- I appreciate what the witness said and I
24 sympathize totally with her. I don't want to make light
25 of her remarks. However, I figured on a map that I live

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1 within like a mile and a half of the Griffith Park
2 composting zoo-doo facility, and I was wondering why don't
3 I smell it. And it's probably because there is so much
4 else to smell in L.A. --

5 (Laughter)

6 BOARD MEMBER ROBERTI: -- like diesel fuel
7 and whatever else that it gets drowned out. So we all
8 have it within not too far a distance if you look or see
9 or smell.

10 CHAIRMAN EATON: All right. Ladies and
11 gentlemen, it's -- I'd like to wrap it up in the next ten
12 minutes in terms of the opposition. So if there's
13 something that relates to the issues that are before the
14 Board which relate to some of the additional kinds of
15 conditions and/or evidence that relates to smells or odors
16 or any other issue since the last meeting would be very,
17 very helpful for us in our deliberations. I don't mean to
18 cut anyone off, but I think we understand some of the
19 issues that were previously stated, but we're looking for
20 information that has taken place since the last time and
21 since some of the issues that seem to have been addressed
22 and whether or not they have been.

23 Yes, sir. Please state your name.

24 MR. ALTMAN: Bart Altman. I live in
25 Rosemont and have lived there for 19 years. When was the

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1 last time anyone has called the sheriff for some help?
2 What we're relying on now is calling the County for
3 complaints and none of this Board will ever smell it or
4 ever answer the phone or respond to it. So what I'm
5 getting at is that what assurances do we have that the
6 complaints ever get taken care of.

7 I've called the numbers. I've got
8 answering machines. The only response you get at the
9 County is an answering machine. The only people you can
10 talk to in an emergency is the fire department or CHP.
11 The rest of it is nonsense. You can't even call when
12 there's a dead dog on the road. There are probably -- so
13 what I'm saying is the effectiveness of the County to
14 respond to things is zero.

15 MR. CERMAK: Okay. I --

16 MR. ALTMAN: You're going to guarantee
17 that?

18 MR. CERMAK: I would have to disagree with
19 you, sir. We have responded to numerous complaints. We
20 have logged every complaint --

21 MR. ALTMAN: And what has been done about
22 it?

23 MR. CERMAK: Well --

24 MR. ALTMAN: They add more chips to the
25 stuff to make it smell different?

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1 MR. CERMAK: If I could take some time to
2 put a graph up that everybody can see on odors, can you --
3 we have responded in one way or another to every complaint
4 that we have received on our line, on our direct line, on
5 the line that we have set up. And as you'll see on that
6 graph there, what have we done? There was obviously an
7 incident, the 10-8 odor incident. That generated close to
8 50 complaints. We had an immediate response to that. We
9 went out to the site and we discovered that the operator
10 had rows and material on-site that had gone anaerobic that
11 created the odor. That operator was directed to get rid
12 of that stuff in an expeditious manner, which he complied
13 with.

14 And if you'll look at the graph, there
15 was -- after that there was the peak where there was about
16 17 complaints, and the reason for that was this material
17 that had gone bad on-site had to be loaded into trucks.

18 MR. ALTMAN: Could it have been maybe the
19 wind changed? See, there's no reference here to the
20 weather. Where is the reference to say this is when the
21 stuff was there and the wind was blowing?

22 MR. CERMAK: The reference there is --

23 MR. ALTMAN: There's no correlation.

24 MR. CERMAK: There is a correlation.

25 MR. ALTMAN: The weather --

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1 MR. CERMAK: If you'll notice that there's
2 different colors from the Newton area, from the Rosemont
3 area and the Bradshaw area, and this would give an idea of
4 where they're concentrated from. As all you folks know,
5 the wind pattern is predominantly from the southwest to
6 the northeast; correct?

7 MR. ALTMAN: Let's say, though, the stuff
8 was still there, the operator didn't move the stuff, the
9 wind changed, now it's coming from the north. It's
10 blowing south. We don't get the smell. So what happens
11 is your graph, people don't call.

12 MR. CERMAK: What I can tell you is when we
13 go on-site, it's real -- if you're smelling it off-site --

14 MR. ALTMAN: Yes.

15 MR. CERMAK: It's real, real easy --

16 MR. ALTMAN: How soon does that happen?

17 MR. CERMAK: Can I maybe try to follow
18 through with this? When we go out there in response to a
19 complaint and we make an investigation and we make a
20 determination that either a stockpile or a windrow has
21 gone anaerobic, I can guarantee you the smell is going to
22 be much, much worse than what you're experiencing. And
23 you can tell immediately when something has gone wrong
24 there and you deal with it.

25 MR. ALTMAN: But where -- the point is that

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1 nothing in the County comes up to what you're telling me
2 because everybody in here deals with the County. They
3 deal with the building inspection, they deal with the
4 county taxes and everything else. Now you're telling me
5 this is a super department and if people call in there
6 will be no mistakes in them taking care of the complaints.
7 Do I call you?

8 MR. CERMAK: Yes.

9 BOARD MEMBER JONES: Mr. Chairman, may I
10 ask a question of the person?

11 MR. ALTMAN: Yes.

12 BOARD MEMBER JONES: You had said there's
13 only two agencies in Sacramento.

14 MR. ALTMAN: That will actually talk to you
15 in a crisis.

16 BOARD MEMBER JONES: Right. And there's
17 probably a reason for that obviously. What you just said
18 is crisis. That the fact that they respond to this many
19 notices is an indication that they are listening to the
20 answering machine. But I think one of the other things
21 you have to know is that state minimum standards for these
22 kinds of facilities are that operators of compost
23 facilities are required to ensure that composting
24 activities are conducted in a manner that minimizes, not
25 eliminates. Not eliminates.

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1 You cannot do any function in solid waste
2 disposal that eliminates odors. There will be an odor no
3 matter what we do. No matter what function happens, there
4 will be an odor. The job of the operator is to do the
5 best practices you can to minimize, not exasperate or
6 exacerbate. And what has happened since September is
7 those very things and by putting in the odor -- by putting
8 in 90 telephone poles.

9 This Board didn't -- we took the time not
10 to go out there once -- I don't know how many -- some of
11 us, but there have been Board Members and staff cruising
12 that area, me especially because I understand the program
13 and I understand how both sides of this system work, and I
14 have to tell you it is unbelievable the amount of things
15 that have gone into that facility to try to operate to
16 minimize. That's a key word. To have a live operator at
17 the LEA 24 hours a day --

18 MR. ALTMAN: No, that's not practical.

19 BOARD MEMBER JONES: That's what the
20 conversation sounded like. I don't think that gets us --

21 MR. ALTMAN: I'm trying to compare it to
22 the real world and the real dealings with the County, and
23 what he's presenting --

24 BOARD MEMBER JONES: That discussion needs
25 to go before the Board of Supervisors, not the Waste

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1 Board.

2 MR. ALTMAN: Well, but he's still working
3 with what you're going to tell him and what --

4 BOARD MEMBER JONES: That --

5 MR. ALTMAN: -- and what you're going to
6 pass. So now you're saying these guys are all wet, they
7 smell the stuff but don't worry about it. They put up all
8 this anti-stink stuff, put all this great stuff, there
9 will be a little bit of an odor and we'll agree to that
10 with all of those 35 things and then it goes back to the
11 County's shoulders to monitor it. And what I'm telling
12 you about the County, despite this gentleman here and
13 whatever legal is, they don't do a good job. They don't
14 have enough staff to do it. How many people are on your
15 staff that monitor this? One?

16 MR. CERMAK: There's four people on the LEA
17 staff.

18 MR. ALTMAN: Four people. And is this the
19 only facility that they get complaints about or is there
20 another facility in Sacramento that does this? How about
21 the one over on Elder Creek there? No one complains about
22 that, I imagine. You can't even hardly drive down that
23 street.

24 MR. CERMAK: We get complaints on a number
25 of facilities and we respond appropriately to all of --

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1 MR. ALTMAN: That's what I'm saying.
2 What's appropriate? When is the wind going to change?
3 You see what I'm saying? It's just -- you're putting too
4 much -- we're putting too much faith in the ability of the
5 County to control this.

6 BOARD MEMBER JONES: Well, that may be
7 true, but one of the things that we do is every LEA in the
8 state of California gets evaluated by this Board and by
9 our staff. And while it may not be everything you want it
10 to be, Mr. Cermak and his people have always been up at
11 the top of those LEA evaluations --

12 MR. ALTMAN: That's good to know.

13 BOARD MEMBER JONES: -- which is a citizen
14 within Sacramento County. That's a heck of a lot better
15 than the ones that we've had to take away that
16 responsibility and do it ourselves because we didn't think
17 they were taking care of the public health and safety.
18 Just a point of information.

19 MR. ALTMAN: Okay. So far.

20 CHAIRMAN EATON: Yes, sir. Come on up
21 front. Can you hold on one second? We have to change
22 some paper. If we can just take a short five-minute break
23 while she works with the machine, stretch her legs.

24 (Brief recess taken)

25 CHAIRMAN EATON: Thank you very much, and I

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1 know that the court reporter appreciates it greatly as
2 well. All right.

3 If I could just have your attention, I want
4 to wrap this up. So if I could have the remaining
5 speakers, whether it be two, three, four or five who can
6 then articulate any other points other than what's already
7 been stated, I would greatly appreciate it and I will read
8 into the record those who are desirous to speak.

9 Sir, please come on up. State your name
10 and I can kind of go through it. Yes, sir.

11 MR. LEE: Sorry. Good evening. I'm
12 Richard Lee, owner and resident at the Newton Drive
13 community. I guess it's really needless to mention how
14 detrimental it is that these odors have on our lives, on
15 our health and on our property values. I guess those
16 points should needless to mention. It's just so
17 detrimental at this point. But it is the odor that is
18 what we should concentrate on and we had had these town
19 hall meetings with the -- with the Lionudakis Company
20 there, and on those meetings, I had mentioned what are
21 some of the mechanisms that the Local Enforcement Agency
22 have in terms of determining what is the level, what is
23 the violated level of odor or the offensive level.

24 What triggers that? Do you have a
25 mechanism that does that? They said no there's no

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1 mechanism that does that, no meter to measure this odor.
2 Well, and then also from the law, the law states that this
3 composting operations can operate with the best effort to
4 minimize the odor, but isn't that a subjective call? For
5 them, maybe they tried their best to minimize the odor,
6 but maybe from our standpoint to them might be a minimal
7 level, but to us it might be offensive.

8 So what I would ask the Board to do, if you
9 can, change the subjective call made by the LEA. Make
10 that an objective call, meaning determine how many calls
11 of complaint from the residents to determine a nuisance
12 level. If you can, come up with that objective call, then
13 yeah, maybe that can help the LEA to enforce his action
14 there.

15 Otherwise, we'll be back to where it is
16 from the operator's standpoint, he said hey, I did my
17 best. I tried to minimize the odor, but that's nothing.
18 To us it might be offensive but it's unbearable, and I am
19 a resident there for 15 years. This is the first time
20 that I noticed this odor from Lionudakis. So there's
21 no -- there's no way that you can deny that that odor
22 wasn't coming from Lionudakis. It came from Lionudakis.
23 And my point here is how do we go about doing that and
24 let's help the LEA do his job by setting up maybe a number
25 of calls or complaint or whatever so that we can determine

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1 that is a nuisance level, otherwise it can't be done.

2 That's my point. Thank you.

3 CHAIRMAN EATON: Thank you.

4 MR. ELLINGTON: Good evening. My name is

5 Deangelo Ellington. I live in the Beazer development.

6 Excuse me. I'm kind of nervous. There was some really

7 interesting points brought up by the citizens, my

8 neighbors basically, and I would ask the Board to take

9 them very seriously in their consideration.

10 I've been brought to the attention of this

11 situation by my wife who complained about the odors last

12 summer saying how strong they were and how difficult it

13 was for her, being an asthmatic, to breathe with those

14 odors in the air. I realize that for our society there's

15 really nothing we can do but try to improve our recycling

16 processes and realize that this plant may be to the

17 benefit of our community, but at the same time I have to

18 take into account the impact it's going to have on my

19 wife, my family, obviously my neighbors.

20 I don't want to carry this on too long.

21 I'm stuttering as it is, but basically I was looking at

22 the permit and it says that we will increase from 10,000,

23 which is the current cubic yards, up to 30,000 on January

24 27th if this permit is approved, and on April 27th we will

25 increase to 50,000 if there is no problems with the 30,000

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1 level being maintained.

2 I would suggest to the Board, considering
3 that the months of July, August and September are our
4 hottest months of the year where I would think, not being
5 a professional at this, the humidity or moisture content
6 of the compost is going to be the most difficult to
7 maintain during that time of year, that you may look at
8 stretching the April 27th date a little further. You have
9 July as a checkpoint date and saying all right. Let's
10 revisit this 50,000, see how well he's managed that in
11 July.

12 What I suggest, before we jump from 10 to
13 50 in a matter of five months, that maybe we look at
14 jumping from 10 to 30 saying hey, manage this during the
15 summer. Let me see you manage this during May, June and
16 July, and if you can do that successfully and keep the
17 residents happy, then let's look at you taking it up to
18 50. To me that is an equitable position for the Board to
19 take, an equitable position for us as residents to look at
20 hey, they're trying, they're trying to meet our needs.

21 They're not jumping and saying let's
22 increase this 20,000 cubic yards in a matter of five
23 months regardless of what's being said by the residents,
24 but you take into account the weather conditions as people
25 have pointed out, you take into account the fact that in

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1 June, July and August it gets awful hot. And I don't know
2 about you guys's gardens, but my stuff starts to get a
3 little funky around that time of year, too.

4 (Laughter)

5 MR. ELLINGTON: I would think that kind of
6 evaluation might be something to consider, and I leave it
7 up to you guys. You guys are professionals. You know
8 what's best, but I live there and so do these people.

9 Thank you.

10 (Applause)

11 BOARD MEMBER JONES: Mr. Chairman.

12 CHAIRMAN EATON: Mr. Jones.

13 BOARD MEMBER JONES: Doesn't the permit say
14 not sooner than? It doesn't say that will be the date.
15 Mine says not sooner than.

16 MR. ELLINGTON: Not sooner than. Exactly.
17 I have a feeling if everything works out April 27th that
18 manager is going to be hey, boost me up, bring me some
19 more trucks. I know I would if I --

20 AUDIENCE MEMBER: That's another minimize
21 statement, no sooner than.

22 MR. CERMAK: I think we also have to keep
23 in perspective the statement that's below that. It says,
24 "The above volumes shall be increased upon successful
25 completion of previous volume increment." Successful

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1 completion by the -- "should facility operations create a
2 public nuisance, permitted volumes may be reduced or next
3 scheduled tier may be postponed." So that says two
4 things. First of all they can't -- or we have the
5 authority not to let them wrap up to the next volume and
6 in addition to that, we can have them reduce what they
7 have already done.

8 MR. ELLINGTON: I agree with you, sir, and
9 I think the Board understood what I said, but to reiterate
10 it I think it would be a lot easier to say okay. Let's go
11 back down to 10 from 30 than to go back down to 10 from
12 50. I don't think we're going to do that. I think what's
13 going to happen is they're going to manage 30, everybody
14 is going to be cool with that, we're going to get to 50,
15 it's going to get out of control, we're going to take it
16 back down to 30. I would rather us test 30 and then say
17 okay. Let's go to 50.

18 MR. DE BIE: Additionally his point is the
19 summer is going to be different conditions, so you might
20 not notice in the spring as much about the odor, et
21 cetera.

22 MR. MULAN: My name is Robert Mulan. I
23 live in Rosemont, just about a mile from the facility, and
24 I've had extensive log of odors and it takes a lot of
25 time. Every time, we go outside and I have to jump in my

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1 vehicle, go to the site, say yes, that is the odor, get
2 back in my car, write it down in my log and note the wind
3 speed and everything.

4 But a couple things that -- I guess my
5 point on that was not everybody is going to take the time
6 to do that and I think that's only why you get a certain
7 number of complaints because it's a really big hassle.

8 Just to make this brief, there's a flow
9 chart on the back table that you provided. Under the flow
10 chart here, let's say you have one complaint which gets
11 logged into that abase and from that the next step is to
12 evaluate a criteria -- to evaluate a criteria in which
13 someone would actually go out, if it's a business day,
14 actually go out to the facility and see if they can detect
15 the problem or find it by that point.

16 So my question is, are these real numbers?
17 Is the five a day a real number with a question behind it?
18 Is it five a day or ten a week or is this an idea? It
19 would make us feel better if we actually had a number that
20 said okay. It's not 80. It's not 80 over a weekend
21 before someone will go out and check it. That's my point.

22 MR. CERMAK: This is a guidance document.
23 The purpose of this was to take a look at it and get
24 something down on paper, and it's a guidance document. It
25 doesn't say that we're not going to go out there if there

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1 was one complaint.

2 MR. MULAN: Okay.

3 MR. CERMAK: What this is going to do is --

4 I think what we have to do to be realistic, we have to
5 take into account there are going to be some complaints
6 possibility that are not valid, and if we committed to
7 going out on every one of the complaints, that seems
8 unrealistic.

9 MR. MULAN: Right.

10 MR. CERMAK: So we looked at some kind of
11 numbers, and these are -- some of these numbers came from
12 the Air Pollution Control District who uses numbers
13 similar to this.

14 MR. MULAN: Okay.

15 MR. CERMAK: So this is simply a guidance
16 document, and I think what we're really trying to do is
17 get back to the basic question. Is this operator doing
18 something at the site that's creating the odor and not
19 using the appropriate practice, whether it's one complaint
20 or ten complaints? It's easy -- on the other chart that
21 you saw, when you get 40-plus complaints or 20 complaints
22 coming basically from the same area, you know immediately
23 something is wrong, something has gone amiss. That's a
24 signal to get on it right away and figure out what it is
25 and if there's some solution and take the corrective

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1 action.

2 And then there's the other end of it where
3 if you get one or two complaints and the other thing we
4 try to track, are they from the same people because again,
5 they may be valid, but there are circumstances where you
6 may get the same people complaining every day. And there
7 may be validity to it, but it's hard to tell, but 70 or 80
8 complaints, that's easy to determine there's a problem,
9 immediate response.

10 Less than that, we want to log them, we
11 want to track them, but we're not going to guarantee that
12 we're going to go out on every complaint that's logged.

13 MR. MULAN: I wasn't referring to every
14 complaint, but 80 is a lot of complaints. And in order to
15 get 80 complaints, a whole lot more people than that are
16 suffering. And last summer, people didn't know where the
17 odor was coming from or you would have had people beating
18 down your doors.

19 Is there any way that you could firm up any
20 kind of number? Are you saying -- I realize this is a
21 guideline. I appreciate the flow chart because it makes
22 things a lot clearer in my mind of the process which was
23 real big, but is there any way that you could -- obviously
24 one is not a number. Obviously I think 80 is way too
25 many. If 80 people complain, there is a horrendous

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1 problem out there, and people are getting sick if 80
2 people complain. So is there anything we can discuss
3 tonight to make this number a little more rigid?

4 MR. CERMAK: Are you talking about the
5 third box down, if it's greater than five a day or ten per
6 week?

7 MR. MULAN: Yes. Because that's the box
8 that initiates the complaint verified by inspector, and
9 apparently that's the only thing that matters. And then
10 after that, whether or not you decide to do an additional
11 survey or to issue a violation, that box is critical if
12 you were to fall into this model.

13 MR. CERMAK: What would you suggest the
14 number be in there?

15 MR. MULAN: I don't mind five a day, ten a
16 week.

17 MR. CERMAK: Okay. So you would ask that
18 the question mark be taken out?

19 MR. MULAN: Well, if everyone else is in
20 agreement here. Does that sound good? It's better than
21 the 80.

22 MR. CERMAK: The 80 isn't in there. I used
23 the point of 80 that it's real obvious from the chart --

24 MR. MULAN: Okay.

25 MR. CERMAK: -- when there are 80. This

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1 was put together after that incident to try to address the
2 issues. What should be a proper procedure for complaint
3 and response --

4 MR. MULAN: Okay.

5 MR. CERMAK: -- from the one all the way on
6 up. And this to me is telling me that if we get greater
7 than five a day or more than ten per week, there's going
8 to be a response to that. But at the same time, I want
9 everybody to understand we're not going to say gee,
10 because we got only four complaints we're not going to do
11 anything about it.

12 MR. MULAN: Right.

13 MR. CERMAK: We're going to evaluate it.

14 MR. MULAN: Okay. I appreciate that. I
15 just was hoping -- we're kind of out in limbo. We try to
16 have as much input as we can, but sometimes we don't
17 understand what all the rules are in the flow chart, and
18 by having a little more set, defined ways of knowing
19 what's going to happen really helps.

20 The other issue -- I don't know if I
21 mentioned it, but I really agree with what the previous
22 speaker is saying about pushing the increase a little bit
23 further back. I guess I pretty much said that at the
24 beginning.

25 But -- and referring back to the bottom

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1 here the issuing notice of violation, I hope you already
2 haven't discussed this, but can you explain what the steps
3 are? You've had one notice of violation already and that
4 was back in October, and have there been any additional?

5 MR. CERMAK: No, there haven't been any
6 additional. And if an operator complies with the notice
7 of violation, it's clear. What the procedure is is we
8 have to verify that the complaint is valid and at that
9 time we would ask the operator to do something specific to
10 correct it. Now, we can't issue a notice of violation --
11 that's a judgment call based on --

12 MR. MULAN: Okay.

13 MR. CERMAK: We're going to investigate to
14 see whether this operator is doing something on-site that
15 is creating a problem, that's against what's in the
16 conditions of the permit, the best management practices.
17 If this operator is and it's confirmed, then we can either
18 give an area concern or a notice of violation.

19 A notice of violation indicates you've got
20 to fix something, and if the operator is cooperative and
21 fixes it, that clears the notice of violation. If that
22 isn't the case, then the next step would be to issue a
23 notice and order to correct stating that if you don't,
24 then this can happen to you.

25 MR. MULAN: Okay. So under this complaint

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1 verified by inspector is actually another box called
2 notice to operator. Let's say they make an attempt to
3 correct the problem. If you don't get any additional
4 complaints after that, you might go to notice of
5 violation. Or is this just a real loose guideline?

6 MR. CERMAK: If we issue a notice of
7 violation, we would expect that the problem would be
8 corrected.

9 MR. MULAN: Okay.

10 MR. CERMAK: We would check back and
11 obviously if it wasn't corrected, we should be able to
12 tell that, but if we did and there's continuous odor
13 problems, then we would know it was corrected.

14 MR. MULAN: What about the situation you
15 get complaints, you tell them to fix it, a week or two
16 goes by, same thing happens, you tell them to fix it. In
17 other words, it's always just fixing the problem instead
18 of really addressing and making sure the problem doesn't
19 happen in the first place. Is there a mechanism to
20 account for that?

21 MR. CERMAK: If there's continued
22 violations, repeat violations of the same thing, that
23 would be dealt with as that's not satisfactory.

24 MR. MULAN: Okay.

25 MR. CERMAK: Because if you've identified

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1 something the operator was doing that they weren't
2 supposed to according to how they operate and they
3 continue to do that, that would be a violation of the
4 terms and conditions of the permit.

5 MR. MULAN: So how many times would you
6 say -- let's say you had two issues in a month or two
7 times and you had to ask them to correct the problem in a
8 month. At what point -- just so we have an idea, at what
9 point would you say these guys don't have things under
10 control and we need to do something other than what we're
11 doing currently? Is there a number that you can just kind
12 of -- a ballpark number?

13 MR. CERMAK: What we use as a general
14 guideline is probably two times after -- if the same
15 problem surfaces a third time in, say, a six-month period.
16 We don't have this set --

17 MR. MULAN: Right. I understand.

18 MR. CERMAK: -- but this is kind of the way
19 we operate.

20 MR. MULAN: Okay.

21 MR. CERMAK: If the same problem happens
22 in, say, a six-month period where it's something the
23 operator is doing and it's the same problem, then I think
24 what we would do is move forward with now you're not
25 abiding by the terms and conditions of your permit and

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1 we'd give them a notice and order that if this happens
2 again, then we're going to take action.

3 MR. MULAN: Okay. I just had one other
4 thing I wanted to say real quick. The reason I am opposed
5 to this is I'm just not convinced they'll be able to fix
6 the problem.

7 Maybe they will be able to, but back at the
8 last meeting they were talking about well, we'll be able
9 to fix it once we get our new windrow machines in. They
10 got the new windrow machines in, didn't work. They said
11 we're going to use enzymes to fix the problem. I went to
12 a community meeting or one of the meetings at their
13 facility, and I asked them about the enzyme. They said
14 well, we don't use those anymore. So I really -- the
15 Bioscent thing, I don't know if I can smell it or not.
16 Sometimes I feel like geez, what's that odor, the Bioscent
17 itself, which isn't necessarily offending but I don't know
18 if that's going to do anything.

19 I realize they have extensive monitoring
20 and different feedstocks they're using, but I just wanted
21 to make it clear to this Board that's the reason I'm
22 opposed to this because I really don't know -- don't
23 believe myself that they'll be able to fix this to where
24 the residents won't be suffering and there might be a
25 border between we're suffering but we can't -- for some

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1 reason we just can't get enough complaints, enough people
2 to complain, because -- we represent I don't know how many
3 people in the whole area, but a whole -- 12,000 people,
4 and to get people to complain really is difficult. Plus
5 sending out notices, et cetera, it's difficult for us. I
6 sent out flyers this weekend, but that's their only notice
7 unless they come here and get on the list and then they
8 send out a little bit of information.

9 BOARD MEMBER PENNINGTON: I hate to tell
10 you this, but to us it doesn't seem like it's very hard to
11 get people to complain.

12 (Laughter)

13 MR. MULAN: Well, yeah.

14 Thank you.

15 CHAIRMAN EATON: Two more speakers on the
16 opposition.

17 MR. COLLINS: My name is John Collins.
18 I've been asked by one of the residents affected here to
19 speak. I've heard some eloquent stuff tonight and I
20 thought the last speaker really did a very good job.

21 What I really want is and what we're
22 concerned about is the reason you asked about new things
23 relating to this permit. What we're concerned about when
24 we look at this permit is what is enforcement going to be.
25 And I think it was very helpful, the comments of Senator

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1 Roberti and the comments of Robert and getting all this on
2 the record and clearing up the air here about what is the
3 enforcement going to be. I think we have a good
4 administrative record here now as to the sense of the
5 Board and the sense of the public and sense of agreement
6 here as to what the enforcement is going to be because I
7 do have a sense that the Board favors granting this permit
8 because of the conditions that have been imposed on the
9 operator.

10 Just in the issue of enforcement, all I
11 briefly want is just an acknowledgement from the Chairman
12 that the Chair has received this document signed by
13 Ms. O'Brien entitled, "For purposes of ensuring that the
14 administrative record is complete," just a
15 preserve-our-rights kind of document.

16 CHAIRMAN EATON: That was the last thing
17 that I would read into the record.

18 MR. COLLINS: Just anecdotally to finish up
19 here, one of the things we raised about the property
20 values, health is the most important thing here and I
21 think you've heard very eloquent statements from the
22 people who are affected health-wise, but we also cautioned
23 last time that this facility really impacts the property
24 values in the neighborhood.

25 One of the requirements under California

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1 law is that the property owner has to disclose any
2 negative factors about his property, and we just -- this
3 gentleman over here in the green shirt and the blue jeans
4 was relating the story of his neighbor who (inaudible)
5 already who was advised by the real estate agent they had
6 to disclose this odor, and once -- that what appeared to
7 be a promising sale, once that odor was disclosed, the
8 buyer just went away. Okay. So that is a factor in your
9 decision, I hope.

10 Thanks very much.

11 CHAIRMAN EATON: Thank you.

12 BOARD MEMBER MOULTON-PATTERSON: Chairman
13 Eaton, may I ask a quick question?

14 CHAIRMAN EATON: Sure.

15 BOARD MEMBER MOULTON-PATTERSON: Again,
16 what is the zoning around --

17 MR. CERMAK: I think one of the operator's
18 representatives can speak to that or our county
19 counsel.

20 MR. JOHNSON: Good evening. Thad Johnson
21 with Phil Lionudakis. The zoning around this area is
22 industrial reserve and heavy industrial usage surrounding
23 the property. We have a map here if you would like to
24 view it.

25 CHAIRMAN EATON: Thank you.

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1 BOARD MEMBER MOULTON-PATTERSON: Thank you.

2 CHAIRMAN EATON: Yes, sir.

3 MR. BEULLER: My name is Ken Bueller. I'm
4 a resident of Rosemont. I would like to mention that I am
5 a board certified industrial hygienist. Over the last ten
6 years I've taken hundreds of bioaerosol samples. We've
7 talked a lot about the odor here tonight. I think we need
8 to also consider what causes the odor and is there a
9 health concern there.

10 I wrote to the Board several weeks ago
11 asking for objective data, air monitoring to show us
12 whether or not there are contaminants in the area
13 associated with this odor. In conducting bioaerosol
14 samples, I have seen a relation to odor. Five years ago I
15 took dozens of air samples down at our Sacramento County
16 regional waste treatment plant. Wherever the odor was
17 strongest, that's where we have the highest concentrations
18 of bacteria. I think there is an association there even
19 though this report that I was sent does state that with
20 distance, those concentrations drop off. We're talking
21 about microscopic particulates. They don't fall to the
22 ground. They're simply diluted and they are still
23 present.

24 I was told when I sent this document,
25 "Bioaerosols and Green Waste Composting in California,"

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1 that according to this document there doesn't seem to be a
2 health concern for communities. I read this thoroughly
3 and I didn't see that stated anywhere in here. I am
4 familiar with some of the people that wrote and reviewed
5 this document. I've spoken to them before professionally
6 in the past, and I respect their input in this document,
7 but what I am reading here is that in several locations
8 they are stating that more objective data is needed.

9 I would like to propose that the LEA or
10 someone be involved in conducting air monitoring of this
11 facility to give us objective data, to state what the
12 health concerns are. The odor really isn't the concern.
13 As I mentioned, it's what is causing that odor. If we're
14 talking about fungus that causes allergies and other
15 serious diseases, then let's find out what those
16 concentrations are in the community.

17 This document here states there isn't
18 sufficient data to show that workers are adversely
19 affected. The American worker is certainly much more
20 healthy than the average citizen when we're talking about
21 children, the elderly, people with compromised immune
22 systems who can be adversely affected by concentrations of
23 bioaerosols at much lower levels than the average, healthy
24 American worker would be.

25 So I would like to wrap it up and just

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1 propose that the County or someone look at concentrations
2 in a worst case scenario, not this winter while it's
3 raining, but in the summertime with a lowered amount of
4 waste being composted so we can get an idea of what the
5 concentrations are that the community is being exposed to.

6 In my bioaerosol monitoring, I have
7 sometimes recommended that air monitoring not be done,
8 for example, in an indoor air quality situation, because
9 you don't want to know what your concentrations are. And
10 in this situation here, we do want to know. The community
11 wants to know what we're being exposed to.

12 I would hope that would be taken into
13 consideration. Thank you.

14 CHAIRMAN EATON: Thank you.

15 (Applause)

16 MR. CERMAK: Mr. Chairman, can I respond?

17 CHAIRMAN EATON: Mr. Cermak.

18 MR. CERMAK: First of all, I'm not an air
19 quality expert and never professed to be, and whether or
20 not the gentleman's concerns are valid, I'm not going to
21 make a judgement on that, but it would seem to me that if
22 in fact this is a concern, then I think it would be
23 inappropriate to require a county agency or a specific
24 operator to do such a study.

25 I think it would be more appropriate,

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1 perhaps if the Board has the feeling, to direct their
2 staff to do a study or whatever it takes because to my
3 knowledge, these composting -- this is not a unique
4 composting facility. I don't know how many there are, but
5 I would assume there's double-digit existing compost
6 facilities that take the same type of feedstock, and if
7 there's a problem with this type of facility, then there
8 may be a problem with all of them.

9 Thank you.

10 BOARD MEMBER JONES: Mr. Chairman.

11 CHAIRMAN EATON: Mr. Jones. I'm sorry.

12 Ms. Nauman.

13 BOARD MEMBER JONES: I just wanted the
14 Board to recall that when we did the contract concepts
15 last year, we had a contract concept that we are asking --
16 we're actually funding a study of bioaerosols and
17 Aspergillus in composting operations. It won't be
18 specific to one entity, but it will be a data-collecting
19 exercise to find out what the best practices are. And
20 really what it is, because there's been an awful lot of
21 debate on both sides of the issue, that's why we put a
22 concept in, I think, for a hundred --

23 MS. NAUMAN: This Board did approve a
24 contract concept in February, actually to augment the
25 existing interagency agreement that we have with Cal Poly

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1 San Luis Obispo who is kind of doing a phased study for us
2 to address the same concerns.

3 CHAIRMAN EATON: All right. With that, I
4 just want to ask after some five hours of hearings, not
5 only today but previously, is there anyone else who has
6 additional information with regard to this project other
7 than the Rosemont Homes or Beazer Homes or some other
8 geographical area so that we can get a full perspective
9 after all this time?

10 Yes, sir.

11 MR. BEE: My name is Steven Bee and I'm a
12 Rosemont resident. I just have one question. And that is
13 I haven't heard a word about the EPA and where does the
14 EPA stand. We have seen many times where state
15 government, county government and city government have
16 done things and eventually the EPA comes in and shuts it
17 down. Then we have a big mess to clean up. It seems like
18 this is basically still an experiment.

19 It's not -- I have to disagree with the
20 fact that you could minimize odors in a sewage treatment
21 plant because I'm a sewage treatment plant operator, and I
22 know that in Marin County, which has the highest
23 technology sewer treatment plant in the state, there is no
24 odors, but it is a very high-tech factory in a sense.
25 It's not just a sewage treatment plant.

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1 This is basically a hole in the ground.

2 There isn't a lot of technology here. So if we're going
3 to experiment -- and I understand that we have to do
4 something with this problem -- but do we have to
5 experiment in a metropolitan area? I just wonder if
6 eventually this gets down to where the EPA does get
7 involved as we've seen this happen many, many times.

8 We just had a huge tire fire that the State
9 was supposedly overseeing until we had tons and tons of
10 tires built up. They caught fire. We had this gigantic
11 fire and it's just a big mess. It was a private industry
12 that monitored it. If this was operated by the State or
13 the County, I would feel much more comfortable with it
14 than with private industry.

15 So my concerns are is the EPA involved in
16 any way, have they been contacted, monitored, anything.
17 Do they have any input on it.

18 That's all I had to say.

19 CHAIRMAN EATON: With regard to the permit
20 here? Not that I'm aware of. I don't believe they have
21 any jurisdiction at this time.

22 MR. WHITEHILL: I think he's speaking of
23 federal EPA.

24 CHAIRMAN EATON: I think that's what
25 they're talking about, federal.

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1 BOARD MEMBER JONES: I think that the
2 people need to know that the federal government, through
3 Subtitle D, established a criteria that all states are
4 either approved or not approved to manage their own solid
5 waste systems. State of California was one of the first
6 three states approved in the nation to manage it and has
7 been approved and kept its approval from USEPA.

8 What this composting tier is, it's not
9 experimental. Composting has been going on for an awful
10 long time and this facility will be operated in accordance
11 with state minimum standards which were established by
12 this Board and ratified by this Board, and they're the
13 standards just like operating a transfer station, a
14 recycling facility, a landfill, a waste tire facility.

15 That one, by the way, was under an
16 enforcement action by us when it went up in flames. So
17 it -- the EPA doesn't have an issue here. We've been
18 authorized and approved because of Title 14, because of
19 Chapter 15, because of AB 939, and now because of Title
20 27, that this state is competent to manage its own solid
21 waste stream. So if that gives people a level of comfort
22 that, in fact, our programs have been approved by the
23 federal agencies that we have the ability to manage our
24 own waste streams.

25 CHAIRMAN EATON: All right. Does the

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1 operator wish to make any rebuttal, a short rebuttal,
2 before the Board has a dialogue? Okay.

3 Board Members, any comments?

4 BOARD MEMBER PENNINGTON: Mr. Chairman.

5 CHAIRMAN EATON: Mr. Pennington.

6 BOARD MEMBER PENNINGTON: In the four and a
7 half years that I've been here, this one is particularly
8 difficult for me. I sympathize with these people a great
9 deal. I can't imagine anything worse than having a home
10 and buying your home and then having an operation come in
11 that does ruin your evening and your porch and that kind
12 of thing. But I also think that Mr. Lionudakis and his
13 operation has made every effort they can to try to put
14 this into a good neighbor position, and I think the LEA
15 and Mr. Cermak has sat here and explained this and has
16 made me feel a lot more comfortable about this particular
17 project.

18 I guess I wish I didn't have to make a
19 decision, but -- so it's -- I think everybody involved
20 needs to be congratulated. We've sat here a number of
21 times, and particularly Mr. Jones and I have sat here and
22 listened to a public that were just outrageous. You
23 people have been very appropriate and have been good to
24 each other and not been vicious about your concerns. I
25 think that's the way to approach us and it does put us in

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1 a position that we are more responsive to what you have to
2 say. So that's all I've got to say.

3 CHAIRMAN EATON: Okay. Before we get ready
4 to make a decision, I just wanted to reiterate that for
5 the record we have received a document from Colleen
6 O'Brien of 5524 Newton Drive, Sacramento, also to be made
7 part of the record, and I will hand it to the court
8 reporter or to Ms. Dominguez to make it part of the
9 official transcript for purposes as requested.

10 What's our pleasure?

11 BOARD MEMBER JONES: Mr. Chairman.

12 CHAIRMAN EATON: Mr. Jones.

13 BOARD MEMBER JONES: I'm prepared to move
14 adoption of the resolution for Lionudakis Wood and Green
15 Waste Recycling and Compost Facility in Sacramento County.

16 CHAIRMAN EATON: Okay. Second? I'll
17 second the motion.

18 Mr. Jones moves and Mr. Eaton seconds that
19 we adopt Resolution 2000-40.

20 Madam Secretary, please call the roll.

21 BOARD SECRETARY: Board Members Jones.

22 BOARD MEMBER JONES: Aye.

23 BOARD SECRETARY: Moulton-Patterson.

24 BOARD MEMBER MOULTON-PATTERSON: Aye.

25 BOARD SECRETARY: Pennington.

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1 BOARD MEMBER PENNINGTON: Aye.

2 BOARD SECRETARY: Roberti.

3 BOARD MEMBER ROBERTI: Aye.

4 BOARD SECRETARY: Chairman Eaton.

5 CHAIRMAN EATON: Aye.

6 Okay.

7 MR. CERMAK: Mr. Chairman, I'd like to if I
8 might make a --

9 CHAIRMAN EATON: Mr. Cermak, please.

10 MR. CERMAK: -- brief comment. This was a
11 very difficult situation for all people involved. We got
12 good input from the neighbors, but what I would really
13 like to do is acknowledge Waste Board staff that probably
14 without their assistance, we wouldn't be where we're at.
15 We had assistance from your legal staff, and I
16 particularly want to single out Jon Whitehill who has
17 spent a lot of his own time and he was always there when
18 we needed him.

19 So I want to thank the Board for the
20 cooperation, and to me this is a true partnership.

21 CHAIRMAN EATON: Thank you, Mr. Cermak,
22 and thank you, Mr. Whitehill.

23 Members, for the rest of the late hour, if
24 it meets with your approval, we've got a couple of short
25 items, that being some regs that have to go out for a

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1 couple of -- another 15-day period, a couple of small
2 awards, and then we have 38th Street. The reason I would
3 like to get through those, Board staff does haven't to
4 come back in the morning because they're from a different
5 division. So that will allow them to at least have some
6 rest, with the exception of Ms. Nauman, who will have to
7 come back and present the issue as it relates to the
8 regulatory tier that was the subject of an appeal.

9 So we're trying to get through so your
10 other staff can go home and not come back if you so desire
11 to not have them come back until an appropriate time in
12 the morning. So if you can kind of move quickly through
13 Items 30, 32 and 33, then we can get to the issue that may
14 take some additional time.

15 MS. NAUMAN: We will do this quickly. Item
16 30 is consideration of approval of proposed revisions to
17 the regulations for farm and ranch solid waste cleanup and
18 abatement program, and Georgianne Turner will be making a
19 presentation.

20 MS. TURNER: I'm going to make this very
21 brief. Basically, if you recall, we went out for 15-day
22 and we have received no comments, and George Larson was
23 here to talk to us but he gave up and went to have a
24 martini.

25 (Laughter)

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1 BOARD MEMBER PENNINGTON: There are some
2 lucky people.

3 MS. TURNER: But I had discussed with him
4 on the phone about the regulations and he was happy with
5 them. So with that, I will recommend that the Board adopt
6 Resolution 2000-24 adopting the farm and ranch solid waste
7 cleanup and abatement grant regulations and direct staff
8 to submit the regulations to OAL for review and approval.

9 BOARD MEMBER PENNINGTON: Mr. Chairman.

10 CHAIRMAN EATON: Mr. Pennington.

11 BOARD MEMBER PENNINGTON: I'll move
12 adoption of Resolution 2000-24 to approve the adoption of
13 proposed revisions to the regulations for the farm and
14 ranch solid waste cleanup and abatement grant program, SB
15 1330.

16 BOARD MEMBER MOULTON-PATTERSON: Second.

17 CHAIRMAN EATON: Mr. Pennington moves and
18 Ms. Moulton-Patterson in the corner seconds that we adopt
19 Resolution 2000-24.

20 Without objection, we'll substitute the
21 previous roll call. Hearing no objection, so shall be
22 ordered.

23 Item Number 32.

24 MS. NAUMAN: Item 32 is consideration of
25 award of an agreement with the County of Yolo for the

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1 landfill bioreactor project for fiscal year 1999/2000.

2 This was contract concept number 57.

3 Scott Walker will present the item.

4 MR. WALKER: Briefly going through this,
5 this agreement would implement approved fiscal year
6 1999/2000 contract concept number 57. The intent is to
7 facilitate establishment of bioreactor landfill technology
8 in California.

9 Rather than go into the nature of what a
10 bioreactor is, we'll go forward to just to summarize in a
11 sense that the bioreactor landfill is gaining widespread
12 acceptance as an emerging technology of the future which
13 promotes sustainability and improved environmental
14 performance in solid waste management. However, this
15 technology is not yet a standard alternative to drive-to
16 landfills and incentives are needed in order to implement
17 additional scale projects. Several other states have
18 these incentives in place including Florida, Delaware and
19 Iowa.

20 Basically the Board's approval of the
21 bioreactor landfill project will provide such incentive
22 and it will enhance the Board's standing as a leader in
23 solid waste management in the 21st century. The scope of
24 work was approved at this Board meeting as Consent Item
25 31. In a sense, the tasks in the scope of work involve

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1 final plans and specifications for the project and
2 ultimately a final report which would be used as the basis
3 for other operators to use this technology for other
4 projects.

5 The other aspects are the total amount of
6 the contract is \$400,000. Before implementing the
7 project, the contractor will be required to obtain all
8 necessary regulatory approvals, submit the final plans and
9 specifications for staff approval, and establish all the
10 additional sources of funding. Staff are recommending
11 award of an agreement to implement the scope of work to
12 the County of Yolo for the following reasons.

13 One, the County is the only operator in
14 California that has a specific operational scale project
15 which is up to 12 acres in the process of regulatory
16 approval, including USEPA's project XL program, and that
17 program allows USEPA to approve site-specific flexibility
18 in federal standards for environmentally superior
19 technologies. Adding liquids from outside the unit to the
20 waste is required to optimize a bioreactor landfill, and
21 this is included in the project XL proposal.

22 Reason two, staff of the County of Yolo
23 have successfully implemented a small pilot scale research
24 project that provides them with the experience and
25 expertise in this technology. They have published

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1 numerous papers on this project and are considered
2 national and international experts.

3 Three, the County has constructed a lining
4 system for the project and has preliminary design plans
5 and specifications and cost estimates for the rest of the
6 project. The preliminary estimate is \$1.5 million, not
7 including the lining system which they built and that is
8 estimated at \$2 million. The County is pursuing
9 additional sources of funding such as through the
10 California Energy Commission, and the funding in this
11 agreement will provide leverage to obtain that additional
12 funding.

13 Finally, staff is aware of no other
14 operational scale project that is ready to be implemented
15 within the short time frame required by the contract. I
16 also would add that the County of Yolo, both in their
17 current bioreactor test cell and in the operational scale
18 project, will be continuing to use substantial quantities
19 of shredded tires as a civil engineering application.

20 In conclusion, staff recommends adoption of
21 Resolution 2000-49 to award an agreement with the County
22 of Yolo for the landfill bioreactor project.

23 That concludes staff's presentation.

24 BOARD MEMBER JONES: Mr. Chairman.

25 CHAIRMAN EATON: Mr. Jones.

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1 BOARD MEMBER JONES: I want to move this --

2 CHAIRMAN EATON: Mr. Jones, I have a public
3 comment.

4 BOARD MEMBER JONES: Oh, from --
5 okay.

6 CHAIRMAN EATON: Mr. Yazdani.

7 MR. YAZDANI: Good evening, Board Members.
8 My name is Ramin Yazdani with Yolo County Planning and
9 Public Works Department. I'm happy to be here.

10 I just wanted to make a short comment to
11 appreciate Scott Walker and other staff members that have
12 been instrumental in getting this contract concept done,
13 as well as thanking you all for your foresight, for
14 looking beyond what we have today and what could be in the
15 future. So I'm very excited about moving ahead with a
16 full-scale project and really showing, demonstrating what
17 we've already demonstrated in a small scale that could be
18 done in a full large-scale project. Thank you very much.

19 CHAIRMAN EATON: I just have one question.
20 Mr. Jones, is what Mr. Walker and what Mr. Yazdani said
21 what you were pulling our leg on about two months ago on
22 this project? Is that what you were talking about? Okay.

23 Ms. Moulton-Patterson.

24 BOARD MEMBER JONES: I do have one question
25 though, just real quickly. The design criteria,

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1 double-lined or single-lined?

2 MR. YAZDANI: Currently we are single-lined
3 composite, although the Yolo County project has more than
4 one liner system, but --

5 BOARD MEMBER JONES: The Water Board
6 requirements, do they still want two?

7 MR. YAZDANI: I have submitted a 15-page
8 letter justifying the reasons why we think our project can
9 be done with a single liner. We have not heard back from
10 them. It's been just a few days since they received the
11 letter.

12 BOARD MEMBER JONES: Okay. Before my
13 fellow Board Member makes the motion -- I want her to make
14 it. I want the Board Members to know we've put a letter
15 forward to Secretary Hickox asking that we have dialogue
16 between the Water Board and others to make sure that we're
17 not overbuilding these things on this test because it may
18 create a standard that nobody else would ever want to take
19 advantage of the results of this \$400,000 that we're
20 putting in and what's the appropriate level of
21 environmental protection. And I want people to know that
22 this is going to help us bring that forward so before they
23 start building they'll know what the appropriate level is
24 instead of an arbitrary one.

25 MR. YAZDANI: We believe that --

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1 BOARD MEMBER JONES: Two is better than
2 one.

3 MR. YAZDANI: We also believe that our
4 project --

5 CHAIRMAN EATON: Every second that goes by,
6 a dollar comes off the award.

7 (Laughter)

8 CHAIRMAN EATON: I'm sorry. Mr. Yazdani.

9 MR. YAZDANI: Just a quick note on what you
10 just said is what we have is beyond what the regulation
11 requires, so we made sure that this is a test project and
12 it's not -- we're not proposing to do something that the
13 regulation doesn't allow currently.

14 CHAIRMAN EATON: Thank you.

15 MR. YAZDANI: Thank you.

16 CHAIRMAN EATON: Ms. Moulton-Patterson.

17 BOARD MEMBER MOULTON-PATTERSON: Thank you,
18 and thank you, Mr. Jones. I just wanted to make the
19 motion because I was so impressed with this project when I
20 visited and I was so impressed with your enthusiasm. I
21 think it's exciting, and I would like to move to approve
22 Resolution 2000-49 for award of an agreement with the
23 County of Yolo for the landfill bioreactor project for the
24 year 1999/2000.

25 BOARD MEMBER JONES: Second.

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1 CHAIRMAN EATON: All right.

2 Ms. Moulton-Patterson moves and Mr. Jones

3 seconds that we adopt Resolution 2000-49 to award money.

4 Madam Secretary, please call the roll.

5 BOARD SECRETARY: Board Members Jones.

6 BOARD MEMBER JONES: Aye.

7 BOARD SECRETARY: Moulton-Patterson.

8 BOARD MEMBER MOULTON-PATTERSON: Aye.

9 BOARD SECRETARY: Pennington.

10 BOARD MEMBER PENNINGTON: Aye.

11 BOARD SECRETARY: Roberti.

12 BOARD MEMBER ROBERTI: Aye.

13 BOARD SECRETARY: Chairman Eaton.

14 CHAIRMAN EATON: Aye.

15 Item Number 33.

16 MS. NAUMAN: Chairman and Members, Item 33

17 is consideration of criteria for a facility compliance

18 loan program. This is the new program that's being

19 implemented as a result of the current year budget.

20 Bridgette Brown of our staff will make the

21 presentation.

22 MS. BROWN: Good evening, Mr. Chairman and

23 Board Members. I'm Bridgette Brown of the Facilities

24 Operations Branch. This item presents the proposed

25 facility compliance loan program eligibility criteria for

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1 Board approval.

2 Staff is working with RMDZ program staff,
3 the legal office and outside counsel to complete the loan
4 criteria portion of this facility compliance loan program.
5 The loan criteria will be brought before the Board in
6 March of 2000. The Board is required to submit a report
7 to the Joint Legislative Budget Committee prior to
8 implementing the loan program, detailing the eligibility
9 criteria the Board proposes to use to award loans for this
10 program.

11 \$1.44 million is available in the 1999/2000
12 fiscal and can be encumbered within two years. The total
13 amount available for the entire program is \$2.88 million
14 for two years. The interest-free loans are to assist
15 owners and operators of solid waste facilities with
16 environmental compliance problems.

17 Last December, staff mailed an informal
18 letter to LEAs, facility owners and operators, and other
19 interested parties requesting input on existing and future
20 compliance problems at solid waste facilities, possible
21 solutions and their cost estimates. The purpose of the
22 letter was to determine if the eligibility criteria was
23 reasonable. The resulting summary is a list of potential
24 applicants showing an interest in participating in the
25 program but who have not yet applied for a loan, and I

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1 hope everyone has received a copy of the summary.

2 As indicated on the summary, staff received
3 21 responses representing 29 facilities. 12 responses
4 represented the public. Nine were from private entities.
5 Requests for loans totaled almost \$15 million. Of the 21
6 responses received, applicants requested funds for solid
7 waste landfills, closed disposal sites, transfer stations
8 and green waste composting facilities. Of the 29
9 facilities identified, the largest number, 10, represented
10 solid waste landfills followed by nine closed disposal
11 sites.

12 Analysis of the summary shows that staff
13 identified six small publicly operated facilities that
14 primarily service rural areas. Loan requests for these
15 six facilities are approximately \$3 million. If you
16 consider only the eligible cost centers categories A
17 through G as shown on page 5 of the summary, the amount
18 requested would be approximately \$2.6 million. Staff
19 noted there was a significant interest in funding the
20 closure of facilities.

21 In conclusion, staff requests that the
22 Board approve the proposed facility compliance loan
23 program eligibility criteria. Based upon the response
24 from the informal notice, staff feels that the eligibility
25 criteria is reasonable.

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1 Staff recommends adoption of Resolution
2 Number 2000-26 approving the proposed facility compliance
3 loan program eligibility criteria. I would be happy to
4 answer any questions you have at this time.

5 CHAIRMAN EATON: Any questions? Okay.

6 BOARD MEMBER JONES: Mr. Chairman.

7 CHAIRMAN EATON: Mr. Jones.

8 BOARD MEMBER JONES: I think I would be
9 willing to move the resolution but without -- I think
10 eligible expenses, design and construct of monitoring,
11 absolutely. Purchase of operating equipment which would
12 be number two, that makes sense. Three, I don't know.
13 Absolutely not on four. Five could be weighted a little
14 lower maybe. Six, no. And seven, absolutely not.
15 Funding an under-funded financial assurance mechanism at a
16 facility is the responsibility of a local jurisdiction,
17 and if they don't want to make that call and use our money
18 to fund their obligation, that doesn't make a whole lot of
19 sense. They may be out of compliance and maybe we would
20 need to take an action against them as opposed to lending
21 them money.

22 But I think that I'll move Resolution
23 2000-26 to include eligible costs in number one, two,
24 three, five and eight.

25 BOARD MEMBER PENNINGTON: Say again.

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1 BOARD MEMBER JONES: One, two, three, five
2 and eight, and I would probably consider number three to
3 be weighted a little lower on the list than the others. I
4 mean it's clearly --

5 BOARD MEMBER PENNINGTON: You said five.
6 You want five?

7 BOARD MEMBER JONES: Well, I'm worried
8 about some of these. We can put it there and have it just
9 as a minimal or we can take it out. I don't care. We've
10 got \$15 million. Why don't we take it out.

11 BOARD MEMBER PENNINGTON: I would take it
12 out.

13 BOARD MEMBER JONES: Okay. One, two, three
14 and eight.

15 CHAIRMAN EATON: All right.

16 BOARD MEMBER JONES: So I'll move adoption
17 of Resolution 2000-26 to include eligible expenses as the
18 examples were given by staff: One, design and construct
19 environmental monitoring control, remedy landfill gas
20 water quality problems; two, purchase of operating
21 equipment to provide cover and assist in litter and vector
22 control in a facility; and three, construct all winter --
23 internal roads and paths to remedy chronic poor weather
24 problems; and number eight, other uses determined by the
25 Board.

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1 CHAIRMAN EATON: All right.

2 BOARD MEMBER PENNINGTON: Second.

3 CHAIRMAN EATON: Mr. Jones moves and

4 Mr. Pennington seconds that we adopt Resolution 2000-26

5 with the amendment that the possible eligible expenses

6 include only number one, number two, and -- number eight?

7 BOARD MEMBER JONES: Three and eight.

8 CHAIRMAN EATON: Number three and number

9 eight on the attachment one of Agenda Item 33. Okay.

10 Without objection, we'll substitute the

11 previous roll call. Hearing no objection, so shall be

12 ordered.

13 That brings us to our final agenda item for

14 the evening, Item Number 35.

15 MS. NAUMAN: Mr. Chairman and Members, this

16 item is consideration of the 38th Street and Redwood

17 Avenue in San Diego site for the solid waste disposal and

18 codisposal cleanup program, our 2136 program.

19 As the Board will recall, at your meeting

20 of August 31st of last year, staff brought forward for

21 your consideration a recommendation to fund a

22 Board-managed cleanup of the 38th Street site, which

23 you'll recall involves a vacant parcel at 38th and Redwood

24 and then some adjacent parcels. Based on cost estimates

25 at that time and anticipated financial and in-kind

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1 contributions from other involved public entities, your
2 staff recommended a \$200,000 award to the Board-managed
3 cleanup project. At that time, preliminarily site
4 assessment work had been conducted by our Board contractor
5 and additional site assessment work was scheduled to be
6 conducted in the then-near future. During the Board's
7 discussion, a number of issues were raised and the Board
8 requested that the item be brought back to the Board at a
9 later date.

10 Over the ensuing months, a number of events
11 have occurred. The additional site assessment has been
12 performed and the findings are in a site investigation
13 report prepared by the Board's consultant, BAS. The
14 report confirms the presence of soil contaminated with
15 burn ash in the yards of three residential properties,
16 including two residences, the Pachecos and the Davises,
17 where the burn ash projects underneath the homes. Soil
18 contaminated with burn ash was also confirmed on the
19 Caltrans property adjacent to the vacant lot at the corner
20 of 38th and Redwood.

21 The report includes three remediation
22 alternatives. First is in-place capping of the
23 contaminated soil; second option is partial clean closure
24 of the effected properties which would mean partial
25 removal of the contaminated soils and replacement with

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1 clean fill; or three, total clean closure of the effected
2 properties which would mean removal of all of the
3 structures, removal of all contaminated soil, and
4 replacement with clean soil.

5 The City of San Diego is pursuing an
6 agreement with the Department of Toxic Substance Control.
7 Through the Department's voluntary cleanup program, the
8 City will develop a site remediation plan for review and
9 approval by DTSC. The City has also hired a consultant
10 to prepare the required elements of the remediation plan.
11 It should be noted that until such time as that plan is
12 developed and finalized through the DTSC voluntary cleanup
13 program review process, it is not possible for us to
14 specify the final cost for the remediation project.

15 The City has also been working closely with
16 local and federal health agencies on the development of
17 the remediation strategy, and the City has also continued
18 to lead and coordinate all public contact and work to keep
19 the residents of the effected parcels informed of the
20 City's efforts to remediate the property.

21 The City has developed a projected time
22 line for completion of the remediation plan, approval
23 from DTSC and actual remediation of the site. That time
24 line was made available to each of you.

25 Over the past several months, Board staff,

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1 including Mr. Chandler, Ms. Tobias and myself, have been
2 working with the City to craft a proposal to bring forward
3 for the Board's consideration. Based upon the additional
4 knowledge of the site conditions we've gained over those
5 months in our negotiations with the City, staff now is
6 prepared to recommend to the Board that you approve a
7 two-part funding package for the site.

8 The first component would be a matching
9 grant of \$250,000 which, with the City's match, would
10 provide \$500,000. As I mentioned earlier, until the final
11 remediation plan is approved by the Department of Toxic
12 Substance Control, we are not able to determine what
13 additional funds, if any, may be needed to complete the
14 project.

15 Accordingly, staff recommends that the
16 balance of the project cost be funded through a loan to
17 the City of San Diego not to exceed the program maximum
18 loan amount of \$1 million. This funding condition would
19 be subject to a number of conditions that we have worked
20 on with the City and to which they have indicated their
21 agreement in a letter delivered to Mr. Chandler on January
22 20th of this year.

23 These conditions are specified in your
24 staff report. In the interest of time, I will not read
25 them into the record but instead point to them on page

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1 35-5, and there are seven of those conditions, all of
2 which are conditions that must be met prior to the
3 draw-down of any of the matching grant or loan funds.

4 Finally, in accordance with the Board's
5 policy on cost recovery, staff requests waiver of cost
6 recovery from the effected residential property since
7 there is no evidence that these owners caused or were
8 aware of the original site operational or disposal
9 activity.

10 Present today from the City of San Diego is
11 the LEA, Paul Manasian, and Mr. Rich Hayes is here
12 representing the City of San Diego to address the Board on
13 this item.

14 CHAIRMAN EATON: Any questions of staff? I
15 have one.

16 If the remediation plan comes back and says
17 there is \$1 million in additional costs, is our loan
18 program maximum minus the \$250,000 so they're only
19 eligible for \$750,000 or are they eligible for \$1 million?

20 MS. NAUMAN: No, Mr. Chairman. The \$1
21 million applies to the loan component of the program, so
22 you may loan up to \$1 million.

23 CHAIRMAN EATON: So the maximum they would
24 be eligible for in grants and loans would be
25 \$1,250,000.

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1 MS. NAUMAN: That's correct.

2 CHAIRMAN EATON: Just for the record. Been
3 waiting all day. I'm sure there's someone out there with
4 this public comment in our last portion.

5 (Laughter)

6 MR. MANASIAN: I wasn't aware I was going
7 to be addressing the Board since there was a staff report,
8 but the City of San Diego has met with staff. We think
9 we've come up with a program that we agree with. We're
10 very concerned about the residents there and we're
11 diligently working to bring this thing to a close.

12 I'll be glad to answer any questions.

13 BOARD MEMBER PENNINGTON: Mr. Chairman.

14 CHAIRMAN EATON: Mr. Pennington. Do you
15 have any questions or -- I'm going to get a couple points
16 of clarification here.

17 BOARD MEMBER PENNINGTON: Sure.

18 CHAIRMAN EATON: My understanding is that
19 this is going to be -- that the issue of the citizens will
20 be addressed through a plan that the City will develop; is
21 that correct? On some of the other previous issues that
22 have been discussed. That would be issue number four.

23 MS. NAUMAN: Yes, Mr. Chairman. We do have
24 a condition that -- condition number four that the City
25 will develop a plan to address the needs of the residents

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1 of the parcels impacted by the remediation and waive cost
2 recovery against private properties with burn ash on their
3 property.

4 CHAIRMAN EATON: And that will not be a
5 plan that we see or will be a plan that we see prior to
6 the release of the funds?

7 MS. NAUMAN: Mr. Chairman, we're also
8 calling for the City, in condition number five, to provide
9 monthly progress reports to the Board. I would presume
10 that in the context of those monthly progress reports the
11 City would keep you informed of their efforts to address
12 the needs of the residents.

13 CHAIRMAN EATON: And this will be a direct
14 grant; correct?

15 MS. NAUMAN: This is a matching grant.

16 CHAIRMAN EATON: Correct. And the City
17 will perform the work as opposed to our Board-managed
18 contractor?

19 MS. NAUMAN: At this time this is not a
20 Board-managed cleanup. The City has indicated to your
21 staff that they are interested in at some time in the
22 future perhaps pursuing with the Board once they have the
23 remediation plan approved by the Department of Toxic
24 Substance Control to perhaps approach this Board to
25 request the services of our contractor, not as a

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1 Board-managed cleanup but some other type of arrangement
2 whereby they would utilize the services of the contractor
3 directly in order to save the time that they anticipate
4 needing to bring their own contractor on board. So any
5 guidance you may wish to provide us would be appreciated
6 on that.

7 CHAIRMAN EATON: That's not part of the
8 seven conditions; is that correct?

9 MS. NAUMAN: That is not part of the seven
10 conditions nor, I want to make it clear, is it part of the
11 staff recommendation.

12 CHAIRMAN EATON: Okay.

13 BOARD MEMBER JONES: Mr. Chairman.

14 BOARD MEMBER PENNINGTON: Mr. Chairman.

15 CHAIRMAN EATON: Mr. Pennington.

16 BOARD MEMBER PENNINGTON: I'll move
17 adoption of Resolution 2000-57 to approve the 38th Street
18 and Redwood Avenue site in San Diego County for funding
19 from the solid disposal and codisposal program.

20 BOARD MEMBER JONES: I'll second it.

21 CHAIRMAN EATON: All right. If we could
22 make one change that "ensure" is with an "E", not an "I",
23 I would be a happy camper. All right.

24 BOARD MEMBER PENNINGTON: If you want me to
25 do that, fine. I'll do that.

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1 (Laughter)

2 CHAIRMAN EATON: I do. Them legal beagles
3 out there.

4 Madam Secretary, please call the roll.

5 BOARD SECRETARY: Board Members Jones.

6 BOARD MEMBER JONES: Aye.

7 BOARD SECRETARY: Moulton-Patterson.

8 BOARD MEMBER MOULTON-PATTERSON: Aye.

9 BOARD SECRETARY: Pennington.

10 BOARD MEMBER PENNINGTON: Aye.

11 BOARD SECRETARY: Roberti.

12 BOARD MEMBER ROBERTI: Aye.

13 BOARD SECRETARY: Chairman Eaton.

14 CHAIRMAN EATON: Aye.

15 BOARD MEMBER JONES: Mr. Chairman.

16 CHAIRMAN EATON: Mr. Jones.

17 BOARD MEMBER JONES: Just real quickly. I
18 know you guys already missed the plane, but you saw there
19 was an awful lot of business that went on today.

20 MR. MANASIAN: It's just like at home.

21 BOARD MEMBER PENNINGTON: I thought they
22 had the County flying up here.

23 CHAIRMAN EATON: All right. Members, that
24 completes at least today's portion of the agenda. Thank
25 you for your patience and for your participation.

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1 Tomorrow we'll start with Item 36, and I believe then we
2 only have nine items left for tomorrow. So if we move
3 quickly, we'll dispense with those.

4 We'll stand adjourned until 9:30 tomorrow
5 morning. There's a 9:30 time certain for Mr. Ball's
6 hearing on his tire hauler, I believe, license, and that
7 starts at 9:30. I'm sorry.

8 MS. TOBIAS: The next item up would be
9 Safety-Kleen.

10 CHAIRMAN EATON: The next item up would be
11 Item Number 36. So we'll stand adjourned until 9:30 in
12 the morning.

13 Thank you.

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1 STATE OF CALIFORNIA

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4 I, Terri L. Emery, CSR 11598, a Certified
5 Shorthand Reporter in and for the State of California, do
6 hereby certify:

7 That the foregoing proceedings were taken
8 down by me in shorthand at the time and place named
9 therein and was thereafter transcribed under my
10 supervision; that this transcript contains a full, true
11 and correct record of the proceedings which took place at
12 the time and place set forth in the caption hereto.

13

14

15 I further certify that I have no interest
16 in the event of the action.

17

18

19 EXECUTED this 16th day of February, 2000.

20

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24

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Terri L. Emery

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